Supreme Court, U.S.
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Case No. 08-___

IN THE

Supreme Court of the United States

CINTAS CORPORATION,

Petitioner,

v.

ROBERT J. ABEL, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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April 21, 2008

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QUESTION PRESENTED

Whether a federal court has subject-matter jurisdiction over a petition to compel arbitration brought under Section 4 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, when the controversy to be arbitrated involves federal question claims that were initially brought in a different federal court.

LIST OF PARTIES

Cintas Corporation is the Petitioner-Appellee in the court below.

The Respondents-Appellants below are approximately 1,900 Cintas employees, past and present, against whom Cintas filed petitions to compel arbitration in 70 federal judicial districts. The names of these employees are listed in the appendix to this petition ("Pet. App.") at 20a.

STATEMENT REQUIRED BY RULE 29.6

There is no parent or publicly held company that owns 10 percent or more of Cintas Corporation's stock.

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PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

Petitioner Cintas Corporation respectfully requests that this Court grant its petition for a writ of certiorari before judgment.

OPINIONS BELOW

In an unreported order dated April 7, 2008, the Ninth Circuit withdrew submission of this case before it, pending this Court's decision in *Vaden v. Discover Bank*, No. 07-773. A copy of the order appears at Pet. App. 1a. Previously, the court of appeals granted Respondents' application for permission to take an interlocutory appeal under 28 U.S.C. § 1292(b). A copy of that unreported order appears at Pet. App. 2a. The underlying order of the United States District Court for the Northern District of California is unreported but appears at Pet. App. 4a.

JURISDICTION

This case was docketed in the Ninth Circuit in July 2007 and oral argument was presented in December 2007. On April 7, 2008, the court of appeals withdrew submission of the case pending this Court's decision in *Vaden v. Discover Bank*. This petition for certiorari before judgment is filed under Supreme Court Rule 11 and in accordance with 28 U.S.C. § 2101(e). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 4 of the Federal Arbitration Act provides, in part, as follows:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate

> under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.

STATEMENT OF THE CASE

In *Vaden v. Discover Bank*, No. 07-773, the Court granted certiorari on a question that has divided the circuits of the Court of Appeals: whether a federal court has subject-matter jurisdiction over a petition to compel arbitration under Section 4 of the FAA whenever the controversy to be arbitrated arises under federal law. The same question is presented here.[1] This case, however, presents the question in a different – and much more direct – light.

Vaden involves state-law counterclaims and an allegation that diversity jurisdiction exists, two factors that could render unnecessary this Court's ultimate determination of the first question presented in the petition in *Vaden*. The case is further complicated by substantial questions as to whether the controversy to be arbitrated arises under federal law and whether the petitioner even agreed to arbitrate.

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[1] Indeed, the petitioner in *Vaden* cited Cintas' case multiple times in her petition, in an effort to convince this Court to accept review. *See Vaden* Cert. Pet. at 11 n.2, 18-19 n.6.

Here, on the other hand, there is no question that the controversy to be arbitrated is federal – indeed, *the claims at issue were brought in litigation in federal court by each of the Respondents under federal question jurisdiction.* The claims did not arise from counterclaims, nor is there a risk of dueling federal and state court jurisdiction. Finally, Cintas' Section 4 petitions do not allege diversity jurisdiction.

In short, this case isolates and crystallizes the precise question that has divided the circuits of the Court of Appeals, and it does so in a manner that enables the Court to explore fully the ramifications of the rule of law that it will adopt. Such circumstances warrant the extraordinary grant of certiorari before judgment.

The case has its genesis in a class action and collective action lawsuit that was filed under federal question jurisdiction in the United States District Court for the Northern District of California, *Veliz v. Cintas Corp.*, No. C-03-1180-SBA. Pet. App. at 39a. The plaintiffs in *Veliz* seek overtime premiums under Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), as well as other relief under federal and state law.

In accordance with arbitration agreements executed by most of the *Veliz* plaintiffs, Cintas moved under Section 4 of the FAA to compel arbitration of the claims of most of the initial plaintiffs. Each of these plaintiffs had signed an agreement providing that disputes must be resolved by arbitration in the county and state where he or she most recently worked for Cintas. The district court granted the motion with respect to nearly all of the *Veliz* plaintiffs. *Veliz v. Cintas Corp.*, 2004 WL 2452851

(N.D. Cal. April 5, 2004).

The *Veliz* plaintiffs moved for reconsideration, arguing, among other things, that the district court lacked the power to order arbitration outside the Northern District of California. *See* 9 U.S.C. § 4 ("The hearings and proceedings, under such [arbitration] agreement, shall be within the district in which the petition for an order directing arbitration is filed."). The district court granted the motion in part, holding as to the plaintiffs it had up until then compelled to arbitrate that it could not enforce the arbitration agreements' place-of-arbitration term. *Veliz v. Cintas Corp.*, 2005 WL 1048699 (N.D. Cal. May 4, 2005). The court modified its earlier order "to clarify that the plaintiffs compelled to arbitrate must do so in this judicial district." *Id.* at *7.

Meanwhile, approximately 1,900 additional plaintiffs had opted in to the *Veliz* lawsuit. None of these 1,900 opt-in plaintiffs, each of whom had also signed an agreement requiring arbitration of disputes in the place where he or she last worked for Cintas, were compelled to arbitrate by the orders discussed above. Cintas repeatedly and expressly reserved its rights as to those 1,900 plaintiffs to move in the *Veliz* litigation to stay under FAA Section 3 and to petition under FAA Section 4 in each of the relevant districts to compel each of the respective plaintiffs to arbitrate in the place he or she had agreed.

Cintas accordingly moved to stay further proceedings in the *Veliz* litigation pursuant to Section 3 of the FAA until the 1,900 additional opt-in plaintiffs had arbitrated their disputes with Cintas in

accordance with the terms of their arbitration agreements. The district court, having determined that the agreements were enforceable, granted the motion.

Cintas then filed petitions to compel arbitration under Section 4 of the FAA in the 70 federal judicial districts where the 1,900 plaintiffs last worked for Cintas. Each of these petitions invoked the district court's federal question jurisdiction based upon the FLSA claims raised by those of the 1,900 *Veliz* plaintiffs who had agreed to arbitrate in a place located in the respective district.

The Judicial Panel on Multidistrict Litigation transferred Cintas' 70 petitions to the *Veliz* court for "coordinated or consolidated pretrial proceedings" to determine whether the 1,900 opt-in plaintiffs – now respondents in Cintas' Section 4 actions – were refusing to arbitrate in accordance with the terms of their arbitration agreements. *In re Cintas Corp. Overtime Pay Arbitration Litig.*, 444 F. Supp.2d 1353 (J.P.M.L. 2006). The transferee court conducted the necessary proceedings and concluded that each of the respondents was indeed failing, neglecting and refusing in multiple ways to arbitrate in accordance with the terms of his or her arbitration agreement, including the agreement's place-of-arbitration term. Pet. App. at 9a-15a.

In the course of the proceedings in the transferee court, the 1,900 respondents also argued that the federal courts lacked subject-matter jurisdiction over Cintas' Section 4 petitions even though the claims Cintas sought to have arbitrated were the very federal claims that the respondents – as plaintiffs in

Veliz – had brought in federal court litigation. The court rejected that argument. Pet. App. at 7a n.5.

In view of the circuit split on subject matter jurisdiction, the transferee court certified the jurisdictional question for interlocutory review, while reiterating that it found the rationale of *Discover Bank v. Vaden*, 396 F.3d 366 (4th Cir. 2005), more persuasive than that of *Westmoreland Capital Corp. v. Findlay*, 100 F.3d 263 (2d Cir. 1996).

The Ninth Circuit then granted permission to appeal under 28 U.S.C. § 1292(b). Pet. App. at 2a. After expedited briefing and argument, the case was submitted in December 2007. The Ninth Circuit withdrew submission and elected to hold the case pending this Court's decision in *Vaden*. Pet. App. at 1a.

REASONS FOR GRANTING THE PETITION

This petition for a writ of certiorari before judgment should be granted, and the Court should schedule oral argument in tandem and consider this case simultaneously with *Vaden v. Discover Bank*.

This Court has most frequently exercised its power to grant a petition for a writ of certiorari before judgment in cases that complement a case that is already before the Court.[2] Such cases may present

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[2] *See, e.g., United States v. Fanfan, rep. sub nom. United States v. Booker*, 543 U.S. 220 (2005); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Belgarde v. Suquamish Indian Tribe, rep. sub nom. Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *New Haven Inclusion Cases*, 399 U.S. 392 (1970); *McCulloch v. Sociedad Nacional de Marineros*, 372 U.S. 10 (1963); *Hannah v. Slawson, rep. sub nom. Hannah v. Larche*, 363 U.S. 420 (1960);

an issue that is closely related to the issue in the pending case. *See, e.g., Bolling v. Sharpe*, 347 U.S. 497 (1954) (holding, in a companion case to *Brown v. Board of Education*, 344 U.S. 1 (1954), that the Fifth Amendment prohibits the District of Columbia from maintaining racially segregated schools). Or they may present the same issue in a materially different set of circumstances. *See, e.g., Gratz v. Bollinger*, 539 U.S. 244, 260 (2003) (noting that the Court granted certiorari before judgment "so that [it] could address the constitutionality of the consideration of race in university admissions in a wider range of circumstances").

This case falls into the latter category. Like *Vaden v. Discover Bank*, this case presents the question whether a federal court has jurisdiction over a Section 4 petition whenever the controversy to be arbitrated arises under federal law. Unlike *Vaden*, however, this case involves petitions to compel arbitration of unquestionably federal question claims that actually were brought in litigation in federal court – not state-law counterclaims, arguably subject to federal preemption, that were brought in state court. If the 1,900 plaintiffs had sued Cintas in the appropriate federal districts, there would be no question about those courts' ability to exercise

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United States v. Thomas, 362 U.S. 58 (1960); *Taylor v. McElroy*, 360 U.S. 709 (1959); *Kinsella v. Krueger*, 351 U.S. 470 (1956); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Porter v. Dicken*, 328 U.S. 252 (1946); *Rickert Rice Mills, Inc. v. Fontenot*, 297 U.S. 110 (1936); *United States v. Bankers Trust Co., rep. sub nom. Norman v. Baltimore & Ohio RR. Co.*, 294 U.S. 240 (1935); *Hicks v. Mercantile Trust Co., rep. sub nom. White v. Mechanics Secs. Corp.*, 269 U.S. 283 (1925).

jurisdiction over Cintas' request to compel arbitration over the federal claims.

The proper application of Section 4 in these circumstances is a matter not directly raised in *Vaden*. Accepting this case and considering it simultaneously with *Vaden*, therefore, will enable the Court to implement its ultimate rule of law after fully evaluating two fundamentally distinct but complementary factual and procedural situations.

This Court anticipated that this day would come on the question presented, allowing it to give clear guidance now on that which it previewed a quarter century ago: "Section 4 provides for an order compelling arbitration only when the federal district court would have jurisdiction over a suit on the underlying dispute; hence, there must be diversity of citizenship *or some other independent basis for federal jurisdiction* before the order can issue." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983) (emphasis added). The Court thus presaged that the correct approach to subject matter jurisdiction is that taken by the Fourth Circuit in *Discover Bank v. Vaden*, 396 F.3d 366 (4th Cir. 2005) and *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians*, 177 F.3d 1212 (11th Cir. 1999), and not that taken in *Westmoreland Capital Corp. v. Findlay*, 100 F.3d 263 (2nd Cir 1996) and *Smith Barney, Inc. v. Sarver*, 108 F.3d 92 (6th Cir. 1997).

Recent and thorough scholarship confirms the many reasons why that is so. *See* Imre S. Szalai, *The Federal Arbitration Act and the Jurisdiction of the Federal Courts*, 12 Harv. Neg. L. Rev. 319, 346 (2007) ("[T]he Supreme Court has expressly interpreted § 4

as providing for jurisdiction to compel arbitration when the district court would have jurisdiction over a suit on the underlying dispute to be arbitrated . . . ."). Throughout this Court's decision in *Moses H. Cone*, the Court used the term "underlying controversy" and each time the term clearly refers to the underlying controversy be arbitrated. That interpretation of FAA Section 4 is consonant with the statutory text and purpose.

This Court's discussion of FAA Section 4 in *Moses H. Cone* specifically approves of *Commercial Metals Co. v. Balfour, Guthrie, & Co.*, 577 F.2d 264, 268-269 (5th Cir. 1978) *"and cases cited"* therein. *Moses H. Cone*, 460 U.S. at 25 n.32 (emphasis added). One of those cases so approved is *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 408 (2d Cir. 1959), *cert. dismissed per stipulation* 364 U.S. 801 (1960). *Commercial Metals Co.*, 577 F.2d at 268-269. The Second Circuit in *Robert Lawrence Co.* stated that "the jurisdiction under . . . Section 4 may doubtless in some instances be federal question jurisdiction, based upon rights alleged to arise out of some federal statute other than the Arbitration Act." *Robert Lawrence Co.*, 271 F.2d at 408.

That is the situation in the Cintas case, federal question claims arising under a federal statute other than the FAA. In the Cintas case, the statute is the FLSA. But the correct approach to subject matter jurisdiction under the FAA, which answers the question presented, applies to myriad federal question claims.

I. This Case Complements the Pending Case of *Vaden v. Discover Bank* by Presenting the Same Legal Question in a Substantially Different, and Indeed More Straightforward, Factual and Procedural Setting, in Cases Commenced in 70 District Courts Nationwide.

In light of the certiorari grant in *Vaden*, the present case certainly presents an issue worthy of the Court's immediate attention.[3] Moreover, this case is one of nationwide significance, as pending matters sit before 70 of the federal district courts in the Nation, located in eleven of the circuits of the Court of Appeals.[4] The remaining question is whether this case satisfies the high threshold for certiorari before judgment. Indeed, it does, as it sits comfortably alongside other cases where this Court has invoked that procedure. *See, e.g., United States v. Fanfan, rep. sub nom. United States v. Booker*, 543 U.S. 220 (2005); *Gratz*, 539 U.S. at 259-60; *McCulloch v. Sociedad Nacional de Marineros*, 372 U.S. 10, 12 n.1, 16 (1963) (stating that the case in which certiorari was granted before judgment presented a shared question "in better perspective"); *Porter v. Dicken*, 328 U.S. 252, 253-54 (1946). Accepting this case now will also facilitate the Court's deliberations in *Vaden*.

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[3] Because certiorari has already been granted in *Vaden*, Cintas does not wade through the circuit split in this Petition (nor the merits of each side). Although Cintas does not accept the *Vaden* petitioner's portrayal of the split, Cintas fully agrees that a circuit split exists (as it acknowledged before the Ninth Circuit).

[4] In her reply brief, the *Vaden* petitioner cited the nationwide scope of Cintas' case as a basis for a grant of certiorari on the jurisdictional issue presented in her own case. *See Vaden* Cert. Reply Br. at 7 n.3.

A. This Case Lacks the Complicating Issues Present in *Vaden*.

Vaden presents the jurisdictional question that it shares with this case in a substantially different – and more complicated – set of circumstances. *Vaden* began when Discover Bank's servicing affiliate, Discover Financial Services, Inc. ("DFS"), sued credit card holder Betty Vaden in Maryland state court. Invoking Maryland contract law and state anti-usury statutes, Ms. Vaden filed class action counterclaims against DFS. Discover Bank and DFS (collectively "Discover") then filed a Section 4 petition to compel arbitration of Ms. Vaden's counterclaims in the United States District Court for the District of Maryland.

The district court granted the motion to compel arbitration, but the Fourth Circuit remanded for further consideration of subject-matter jurisdiction. *Discover Bank v. Vaden* (*Vaden I*), 396 F.3d 366, 368, 373 (4th Cir. 2005). The Fourth Circuit was persuaded that a federal court has jurisdiction over a Section 4 petition when the controversy to be arbitrated arises under federal law. *Id.* at 369, 373. The court was not prepared to say, however, whether Ms. Vaden's ostensibly state-law counterclaims arose under federal law. *See id.* at 373. In the court's view, the answer to that question depended on whether the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1811 *et seq.*, completely preempted the counterclaims. *Id.* at 373 n.3. And the answer to *that* question depended on whether Discover Bank – which, unlike DFS, is subject to the FDIA – was "a party of interest" in the state-court action. *Id.*

On remand, the district court concluded that Discover Bank was "the real party in interest" and that the FDIA completely preempted Ms. Vaden's counterclaims. *Discover Bank v. Vaden*, 409 F. Supp. 2d 632, 636-37 (D. Md. 2006). Only after affirming those conclusions would the Fourth Circuit hold that the counterclaims arose under federal law. *Discover Bank v. Vaden* (*Vaden II*), 489 F.3d 594, 598-607 (4th Cir. 2007).

Thus, resolution of the jurisdictional question required resolution of "several legally complex and partially fact-bound inquiries" relating to the federal nature of the underlying controversy. *Vaden I*, 396 F.3d at 373. The existence of those preliminary inquiries sets *Vaden* apart from this case, in which there has never been any doubt about the presence of a federal question in the controversy to be arbitrated. There can be no argument in this case, as there is in *Vaden*, that preliminary matters "would require the Court to delve into complex factual questions that may prevent the Court from . . . addressing the scope of Section 4." *Vaden* Br. in Opp. at 13-14. Because each of the Respondents sued Cintas in a federal question lawsuit on the very FLSA claims that Cintas seeks to arbitrate, this case simply does not hinge on consideration of whether the controversy to be arbitrated is federal.

Vaden is further complicated by the fact that the claims relied upon to supply federal jurisdiction originated as state-law counterclaims. The petitioner in *Vaden* ascribes significance to this fact, insisting that counterclaims alone cannot establish federal question jurisdiction. *See Vaden* Cert. Pet. at 26-32 (*citing Holmes Group, Inc. v. Vornado Air Circulation*

Sys., Inc., 535 U.S. 826, 830-32 (2002)). Although the *Vaden* petition frames this issue as the second question presented, *Vaden* Cert. Pet. at (i), it may at least as easily be viewed as a threshold matter, the resolution of which could precede (or possibly pretermit) consideration of the overarching jurisdictional question. No such complication is present in Cintas' case, of course, the underlying claims having been brought affirmatively as federal claims in the *Veliz* complaint. Pet. App. at 39a.

In addition to these collateral matters, in *Vaden*, the possibility exists that federal question jurisdiction is not even needed. Discover sought to amend its petition to demonstrate the existence of federal diversity jurisdiction. *See Vaden* Br. in Opp. at 3 n.1, 12 n.4. The district court had no occasion to rule on that motion, having determined that it had federal question jurisdiction. But if Discover is correct, then the presence of diversity jurisdiction might render consideration of federal question jurisdiction entirely unnecessary. Cintas, on the other hand, has not maintained in these proceedings that diversity jurisdiction exists. Federal jurisdiction over its Section 4 petitions cannot be determined without resolution of the question on which certiorari was granted in *Vaden*.

Finally, *Vaden* is complicated by a factual dispute over whether the parties entered a valid agreement to arbitrate. *See Vaden I*, 396 F.3d at 367-68; *Vaden II*, 489 F.3d at 607. The *Vaden* respondent identifies this dispute as a "serious obstacle[]" to review of the principal jurisdictional question. *Vaden* Br. in Opp. at 15. In Cintas' case, it is undisputed that each of the respondents signed valid arbitration agreements.

That has long ago been established, with no appeal taken from the *Veliz* court decision so establishing.

In short, this case avoids the complications of *Vaden* and represents an ideal vehicle for resolution of the jurisdictional question presented therein. The case involves clearly federal question claims that were filed in a federal-court complaint. There is no assertion of federal diversity jurisdiction. And there is no factual dispute that might derail the jurisdictional inquiry. A simpler, better illuminated presentation of the jurisdictional question in *Vaden* is unlikely to be found.

B. This Case Highlights the Breadth and Consequences of the Rule Advocated by the Petitioner in *Vaden*.

Beyond presenting the jurisdictional question of *Vaden* without that case's collateral issues, this case brightly illustrates the mischief that would be permitted by a rule contrary to the one adopted by the Fourth Circuit. The rule advocated by the petitioner in *Vaden* – that federal courts may not exercise jurisdiction over a petition to compel arbitration by virtue of a federal question in the underlying controversy – would reward the forum-shopping tactics of parties who, wishing to avoid an arbitration agreement's place-of-arbitration term, bring federal claims in a district court whose territory does not include the contractual place of arbitration. That is exactly what the *Veliz* plaintiffs' counsel did, in an effort to force a nationwide class arbitration (if not litigation) in the Northern District of California. The *Veliz* court believed itself powerless to compel arbitration outside the district under Section 4 of the FAA. If the district courts for

the contractual places of arbitration lacked jurisdiction, Cintas would be unable to obtain federal enforcement of the arbitration agreements according to their terms (even though such enforcement would be available had the plaintiffs sued Cintas in those same district courts).

Thus, Cintas' case reveals the arbitrariness that would result from the rule advocated by the *Vaden* petitioner, and the comfort it would give to forum shoppers suing in breach of an arbitration agreement. Whether a federal district court could enforce an arbitration agreement's place-of-arbitration term would depend on which district the plaintiff chose as the forum for a federal lawsuit brought in violation of plaintiff's agreement to arbitrate. Similarly, if a party resisting arbitration elected not to file a lawsuit, no federal court would have jurisdiction to enforce an agreement to arbitrate federal claims, unless the requirements for diversity jurisdiction happened to be satisfied. The doors to the federal courts would be opened or shut depending on the tactics of the party wishing to avoid arbitration in accordance with the agreement. While the *Vaden* petition sounds alarms about "wasteful litigation," the rule it urges this Court to adopt would only ensure that result. *Vaden* Cert. Pet. at 22.

This case also illustrates the disparate treatment of "embedded" and "independent" requests to compel arbitration under the FAA. Under the *Vaden* petitioner's rule, the determining factor for federal question jurisdiction over a petition to compel arbitration of federal claims is whether the petition was filed in a federal lawsuit initiated by

the other party. For federal question jurisdiction to turn on that factor is inconsistent with the Court's refusal to accord substantive significance, in other contexts, to the "embedded" and "independent" distinction. *See, e.g., Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 87-89 (2000).

The concerns highlighted here will affect a broad range of cases if a federal court cannot derive jurisdiction over a Section 4 petition from a federal question in the underlying controversy. All federal question claims outside of admiralty – claims grounded in antitrust, copyright, employment, and securities law, to name a few – will lie outside the power of federal courts to compel arbitration unless diversity jurisdiction exists or the party resisting arbitration obligingly sues in the proper federal court. Cintas' case is the perfect vehicle for addressing this issue which the Court has already taken up in *Vaden*.

II. The Typical Arguments Against Certiorari Before Judgment Do Not Apply in This Case.

Perhaps the most powerful reason to deny a petition for certiorari before judgment is the benefit this Court gains from the lower court's consideration and analysis of the issues. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 937, 938 (1952) (Burton, J., dissenting from grant of certiorari before judgment). In this case, however, the Ninth Circuit has elected to defer its decision in light of *Vaden*, which means that it will not further elucidate the jurisdictional question pending before the Court.

Other considerations that militate against a grant of certiorari before judgment include the opportunity that intermediate appellate review presents for parties to refine their positions, *see id.*, and the avoidance of undue haste. Neither consideration is implicated here, given that the parties fully briefed and argued their positions to the Ninth Circuit before the Ninth Circuit withdrew submission, and no expedited procedure has been requested in this Court. Cintas seeks simultaneous consideration with *Vaden* to ensure judicial economy, not to effect a rush to judgment.

In short, there is no reason to deny certiorari before judgment that might outweigh the considerable benefit that certiorari in this case would bring to consideration of the jurisdictional issue presented by *Vaden*.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari before judgment should be granted, and the Court should schedule oral argument in tandem and consider this case simultaneously with *Vaden*.

Respectfully submitted,

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April 21, 2008

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed APR 07, 2008]

No. 07-16318
D.C. No. CV-06-01781-SBA

CINTAS CORPORATION, Plan Administrator for the Cintas Partners' Plan,
Plaintiff-Appellee,

v.

ROBERT J. ABEL; *et al.*,
Defendants-Appellants.

ORDER

Before: NELSON, REINHARDT, BEA, *Circuit Judges*.

Submission of this case is withdrawn. The case is deferred pending the issuance of the United States Supreme Court's decision in *Vaden v. Discover Bank*, No. 07-773.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed JUL 24, 2007]

No. 07-80046
D.C. No. CV-06-01781-SBA
Northern District of California, San Francisco

CINTAS CORPORATION, Plan Administrator
for the Cintas Partners' Plan,
Plaintiff-Respondent,

v.

ROBERT J. ABEL; *et al.*,
Defendants-Petitioners.

ORDER

Before: SCHROEDER, *Chief Judge*, and WARD-LAW, *Circuit Judge*.

Petitioners' motion to withdraw the petition for permission to appeal filed on April 20, 2007 is granted. The Clerk shall file the renewed petition for permission to appeal pursuant to 28 U.S.C. § 1292(b), received on May 4, 2007.

Petitioners' motion for leave to file a reply brief in support of the renewed petition is granted. The reply brief has been filed.

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is granted. Within 10 days of this order, petitioners shall perfect the appeal pursuant to Federal Rule of Appellate Procedure 5(d).

Should the appeal be perfected, respondent's request to expedite the appeal is granted. The opening brief and excerpts of record will be due September 24, 2007; the answering brief will be due October 24, 2007; and the optional reply brief will be due within 7 days after service of the answering brief. The appeal shall be calendared in the week of December 3-7, 2007, in San Francisco.

Respondent's request to limit the scope of the appeal is referred to the panel that will hear the merits of the appeal.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Filed April 11, 2007]

No. C 06-1781 SBA

IN RE: CINTAS CORP. OVERTIME PAY ARBITRATION LITIGATION

AMENDED SUGGESTION OF REMAND ORDER

BACKGROUND

Veliz v. Cintas, No. 03-1180 SBA, was filed in May 2003 as a class action and collective action on behalf of Service Sales Representatives (SSR's) employed by Cintas. The SSR's sought overtime and back pay under the Fair Labor Standards Act (FLSA) and various state laws.

Cintas moved to compel arbitration and, on April 5, 2004, this Court issued an Order compelling 56 of the 65 Plaintiffs subject to Cintas' Motion to arbitrate their claims. On May 4, 2004, Plaintiffs filed a Demand for Classwide Arbitration with the American Arbitration Association (AAA) in San Francisco. This Demand was filed by Veliz and nine other named claimants, "on behalf of themselves and all others similarly situated." Dosker Decl. Ex. 1. The letter attached to the AAA form stated that "[t]his demand for arbitration is also made on behalf of all individuals who filed, or who hereafter file, Consents to sue in *Veliz, except those* whom Judge Armstrong has ruled may litigate their FLSA claims in federal court." Pepich Decl. Ex. N. Cintas did not object to

the clause construction phase of the arbitration taking place in San Francisco.[1] *See id.* Ex. P.

On May 4, 2005, this Court issued an Order clarifying its April 5 Order. In the clarification, the Court held that the question of whether the agreements at issue permit arbitration on a class or collective basis is for the Arbitrator, not the Court, to decide in the first instance. *Id.* May 4, 2005 Order at 9-10 (citing *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444, 452-53 (2003)). Whether the *Veliz* Plaintiffs who are parties to the arbitration are permitted to arbitrate their claims on a class or collective basis is a question still pending before the Arbitrator.[2]

Approximately 2,400 Plaintiffs opted in to the litigation. On June 6, 2005, Cintas filed a Motion to Stay further litigation under Section 3 of the FAA as to approximately 1,900 of these Plaintiffs, who had signed arbitration agreements and who had not already been compelled to arbitrate. On February 14, 2006, this Court granted the motion, and stayed further proceedings until each of these Plaintiffs (hereinafter "Stay Motion Plaintiffs") had arbitrated

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[1] The AAA's Rules provide for four phases in a demand for class or collective arbitration: (1) the clause construction phase, in which the arbitrator decides whether the parties' contract allows for class actions, (2) the class certification phase, (3) the class notification phase, and (4) the merits phase.

[2] The Arbitrator issued a Clause Construction Award, and the parties filed cross-motions to confirm in part and vacate in part the award. On December 5, 2005, this Court remanded to the Arbitrator for clarification of the award. On December 20, 2005, Cintas filed a Notice of Appeal of that Order.

their disputes with Cintas "in accordance with the terms of the agreement" into which they entered.[3]

Soon thereafter, Cintas filed 70 separate actions in different district courts, each of which is a motion to compel arbitration by Cintas against a *Veliz* Plaintiff. The Judicial Panel on Multidistrict Litigation ("MDL Panel") transferred these actions to this Court for "coordinated or consolidated pretrial proceedings." In other words, the instant MDL consists of 71 actions, the first-filed of which is *Veliz v. Cintas*. Every Respondent in the MDL cases is one of the Plaintiffs in *Veliz*[4] Cintas seeks to compel these individuals to arbitrate their claims, not in the Northern District of California, but in the district where the motion to compel was filed and where the individual is or was employed by Cintas.

The MDL Panel's Transfer Order states that resolution of the 70 actions will require the Court "to construe identical contractual arbitration clauses to determine i) whether the parties named in each motion to compel are refusing to arbitrate within the meaning of § 4 of the Federal Arbitration Act, and/or ii) whether the parties are complying with that obligation by seeking to arbitrate collectively in an arbitration already occurring in the Northern District of California involving a subset of the *Veliz* plaintiffs." Transfer Order at 1-2.

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[3] In so ruling, the Court held that the Stay Motion Plaintiffs' arbitration agreements are enforceable. *See, e.g.*, Request for Judicial Notice Ex. 4 (transcript of hearing on Motion to Stay at 6).

[4] Approximately 1,800 *Veliz* Plaintiffs are Respondents in the 70 actions of which the MDL is composed. Each action involves a subset of the 1,800 individuals who signed agreements with the same place-of-arbitration clause.

On October 27, 2006, this Court ordered the parties to file briefs in support of their respective positions on those questions. Based on the briefing, the Court now finds that it is appropriate to REMAND the MDL cases to the transferor courts for further proceedings.[5]

ANALYSIS

1. Requests for Judicial Notice

Cintas requests judicial notice of the following documents contained in the record of *Veliz v. Cintas*, No. 03-1180 SBA: (1) this Court's September 26, 2005 Order, docket no. 500; (2) a stipulation and joint statement of the parties in response to the September 26, 2006 Order, docket no. 501; (3) excerpts from the transcript of a hearing before this Court on October 18, 2005; (4) excerpts from the transcript of a hearing before this Court on October 27, 2005; (5) this Court's February 14, 2006 Order, docket no. 516; (6) this Court's May 4, 2005 Order, docket no. 426; (7) a minute entry recording the results of the hearing before this Court on October 27, 2005, docket no. 514; (8) this Court's April 5, 2004 Order, docket no. 140; (9) a one-page excerpt from Veliz's Opposition to Cintas' Motion to Stay Proceedings, docket no. 477; and (10) a one-page excerpt from Veliz' Motion Concerning Compliance with Court Orders, docket no. 451.

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[5] On January 9, 2007, Respondents filed an application for leave to file a reply brief [Docket No. 23]. Although the Court's Order regarding briefing did not give Respondents an opportunity to reply, leave to file is GRANTED. However, having read and considered the arguments made in Respondents' reply brief, the Court's decision on this matter is unchanged.

Under Federal Rule of Evidence 201(b), the Court may take judicial notice of documents "capable of accurate and ready determination." A court may take judicial notice of its own records in other cases. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). Accordingly, the Court GRANTS Cintas' Request for Judicial Notice with respect to these documents.

Cintas also requests judicial notice of a copy of each Respondent's employment agreement, which was submitted as an exhibit in each of the 70 MDL cases. "Such documents are part of the files that are in the record of this Court in the cases which are Member Cases under the above-captioned Lead Case and which are listed on the Appendix hereto." Request for Judicial Notice (RJN) at ¶ 9. Finally, Cintas requests judicial notice of the Stipulation and Order "which addresses service of process among other matters" on file in 67 of the 70 MDL cases. RJN at ¶ 10. Cintas includes an exemplar of such Stipulation and Order, which was filed in the United States District Court for the District of Rhode Island, Case No. 06-112S. Cintas "offers to put into the Court's Lead Case file copies of all the items referred to in paragraphs 9 and 10," but suggests granting judicial notice "so as to avoid filling the Court's files with copies that together would be quite voluminous and duplicative." *Id.* at ¶ 13.

Because these documents are part of this Court's files, they are certainly "capable of accurate and ready determination." Respondents have voiced no objection. Therefore, Cintas' Request for Judicial Notice is GRANTED.

Cintas submitted a supplemental Request for Judicial Notice along with its reply brief. In it, Cintas requests judicial notice of twelve other documents

contained in the record of *Veliz v. Cintas*. For the same reasons stated above, the request is GRANTED.

2. Questions posed by this Court's October 28, 2006 Order

   i. Are the parties named in each Motion to Compel refusing to arbitrate within the meaning of § 4 of the FAA?

Section 4 of the FAA provides that "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction . . . of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4.

Each of the transferor courts in this MDL, in deciding whether Cintas has the right to move to compel arbitration, would have to decide whether Respondents have refused to arbitrate. *See PaineWebber Inc. v. Faragalli*, 61 F.3d 1063, 1066 (3d Cir. 1995) (holding that "an action to compel arbitration under the Federal Arbitration Act accrues only when the respondent unequivocally refuses to arbitrate, either by failing to comply with an arbitration demand or by otherwise unambiguously manifesting an intention not to arbitrate the subject matter of the dispute"); *Kim v. Colorall Technologies, Inc.*, 2000 WL 1262667 at *1 (N.D. Cal. 2000) (Walker, J.) (citing *PaineWebber*). Accordingly, the MDL panel has instructed this Court to make that determination.

Cintas argues that the Respondents have failed, neglected, or refused to arbitrate because they have sought to litigate their claims in the *Veliz* action. In

support of this theory, Cintas points to case law holding that when a party commences litigation in court, that constitutes a refusal to arbitrate. *See PaineWebber*, 61 F.3d at 1068; *Roque v. Applied Materials, Inc.*, 2004 WL 1212110 at *4 (D. Or. 2004) ("By filing a complaint in court, a party gives the adverse party actual notice of a refusal to arbitrate sufficient to satisfy § 4 of the FAA."). According to Cintas, by filing consents to sue (and thus becoming party Plaintiffs) in the *Veliz* action, Respondents have "commenced litigation." They have also done so by seeking "affirmative relief in litigation in the *Veliz* Action by moving for an Order seeking to preemptively invalidate or otherwise not have to comply with the place-of-arbitration term in each of their arbitration agreements." Cintas' Brief at 11. Here, Cintas is referring to the fact that Respondents, in their capacity as *Veliz* Plaintiffs, resisted Cintas' Motion to Stay and urged this Court to compel arbitration in this district. See RJN Ex. 5 (February 14, 2006 Order).

Further, Cintas points out that prior to this Court's April 5, 2004 Order compelling arbitration, the *Veliz* Plaintiffs vigorously opposed enforcement of the arbitration agreements. Finally, Cintas asserts that Respondents have refused to arbitrate by stating repeatedly in the *Veliz* action that they object to, and reserve rights to seek appellate relief against, having to arbitrate. For example, at the October 27, 2005 hearing on Cintas' Motion to Stay, the following exchange took place:

> Court: Why are you asking me to compel arbitration for 1700 people that there is no dispute must arbitrate other than a strategic desire to have them

> in one location, which I don't consider the court objective here.
>
> Mr. Pepich: Because, your honor, we would not agree with Cintas that these people have to arbitrate.

Mr. Pepich acknowledged that the Court's April 5 Order extended to the opt-in Plaintiffs, but stated that he disputed the Court's analysis. RJN Ex. 4. *See also* RJN Ex. 10 (Plaintiffs' Opposition to Cintas' Motion to Stay, stating that "Even though plaintiffs' cross-motion applies the Court's prior arbitrability rulings, plaintiffs expressly reserved any and all appellate rights with respect to those arbitrability issues, including whether Cintas' arbitration agreements are unconscionable and unenforceable in whole or in part.").

Respondents deny that they are refusing to arbitrate within the meaning of § 4. On the contrary, Respondents assert, "[t]hey are actively seeking to arbitrate in the Northern District of California in connecting with the presently pending arbitration." Respondents' Brief at 2.

Cintas provides no legal authority for the notion that the *Veliz* Plaintiffs' response to Cintas' Motion to Stay constitutes a refusal to arbitrate—this is properly characterized not an affirmative initiation of litigation, but rather as an attempt to control the place of arbitration. However, the reasoning of *Paine-Webber* and *Roque* persuades this Court that the MDL Respondents' decision to affirmatively opt in to the *Veliz* litigation as Plaintiffs rather than pursuing arbitration constitutes a refusal to arbitrate. *See First Family Financial Services v. Fairley*, 173 F. Supp. 2d 565, 572 (S.D. Miss. 2001) ("The Court

cannot conceive of a more explicit refusal to arbitrate than the bringing of an arbitrable claim" in court). Further, Cintas is correct that Respondents only attempted to join the ongoing arbitration in this District after this Court rejected their argument (advanced in their capacity as *Veliz* plaintiffs) that the arbitration clauses should not be enforced. Cintas is also correct that Respondents have voiced their resistance to arbitration at various stages of the *Veliz* litigation.

However, Cintas' stronger argument is that Respondents have refused to arbitrate within the meaning of section 4 by pursuing arbitration in the Northern District of California, rather than the fora specified in their arbitration agreements.

ii. Are the parties complying with their obligation to arbitrate by seeking to arbitrate collectively in an arbitration proceeding already occurring in the Northern District of California involving a subset of the *Veliz* plaintiffs?

Cintas argues that by attempting to arbitrate in San Francisco, Respondents have refused to arbitrate. Cintas argues that an attempt to arbitrate in a forum other than the one identified in the place-of-arbitration clause is a refusal to arbitrate "in accordance with the terms of the agreement." Cintas' Brief at 12-13. In support of this theory, Cintas relies on *Bear, Stearns & Co., Inc. v. Bennett*, 938 F.2d 31, 32 (2nd Cir. 1991). In that case, the agreement specified New York City as the place of arbitration. Bennett filed a demand for arbitration in Florida, and Bear Stearns filed a petition in the Southern District of New York to compel arbitration in New York City. Without explicitly addressing whether Bear Stearns was "aggrieved" within the meaning of section 4 or

Bennett had refused to arbitrate, the court granted the petition to compel, because "Congress has directed the district courts to order that arbitration proceed 'in accordance with the terms of the agreement.'" *Id.* Cintas also relies on *Sterling Financial Investment Group, Inc. v. Hammer*, 393 F.2d 1223 (11th Cir. 2004), in which the agreement specified Florida as the place of arbitration but one party initiated arbitration in Texas. The court held that the district court properly stayed the Texas arbitration and compelled arbitration in Florida pursuant to section 4, but again, the court did not say anything about whether the party had unequivocally refused to arbitrate.

Bear Stearns and *Sterling* provide support for Cintas' position that Respondents' efforts to arbitrate in California constitute refusal to arbitrate within the meaning of section 4 of the FAA. Although Cintas does not identify any cases in which a party agreed to proceed with arbitration in a forum other than that designated in the contractual place-of-arbitration clause, but resisted arbitration in the contractually-specified forum, and the court squarely held that the party had "refused" to arbitrate within the meaning of section 4, this Court is persuaded that such conduct transgresses section 4.

Respondents argue that they have not refused to arbitrate by pursuing collective arbitration in San Francisco. They point out that each of the Motions to Compel Arbitration at issue in this MDL state that "Plaintiffs in the Northern California Action . . . did not deny that they were required to arbitrate their FLSA claims against Cintas" and that they have "stated on the record in the Northern California Action that they would seek to have the claims heard

in arbitration in Northern California." Thus, Respondents contend, Cintas has, in essence, admitted that they are not refusing to arbitrate. Further, Respondents cite several cases holding that where a party agrees to arbitrate in one venue, the opposing party is not "aggrieved" for purposes of § 4 because there is no refusal to arbitrate. *See, e.g., Broadcort Capital Corp. v. Dutcher*, 859 F. Supp. 1517, 1520 (S.D.N.Y. 1994) (holding that, where party refused to arbitrate in one forum but was attempting to proceed with arbitration in another forum, there was no refusal to arbitrate); *Scan-Graphics, Inc. v. Photomatrix Corp.*, 1992 WL 2231 (E.D. Pa. 1992) (same). However, neither of these cases, nor the other cases cited by Respondents, involved arbitration agreements with place-of-arbitration clauses. Thus, they are not directly applicable to the instant case.

Because there does not appear to be any controlling Supreme Court or Ninth Circuit authority, the Court must decide which is more persuasive: the cases cited by Respondents, which stand for the proposition that so long as the party is amenable to arbitration somewhere, he or she has not refused to arbitrate and a motion to compel should not be entertained; or the cases cited by Cintas, which stand for the proposition that a party refuses arbitration when he or she attempts arbitration in a forum other than that specified in the arbitration agreement, and/or when he or she initiates litigation in court. In the Court's view, the latter are more consistent with the language of section 4, which speaks of a party's failure or refusal to arbitrate *under a written agreement for arbitration.* If the written agreement contains a place-of-arbitration clause, then logically, a party's attempt to arbitrate elsewhere is a refusal to arbitrate under the agreement. This interpretation is also

more consistent with the Supreme Court's admonition that private agreements to arbitrate should be enforced according to their terms. *See Volt Information Sciences, Inc. v. Board of Trustees*, 489 U.S. 468, 479 (1989).

Accordingly, the Court finds that Respondents have refused to arbitrate within the meaning of section 4 of the FAA.

Respondents have also included, as part of their brief in response to this Court's Order, a Motion to Dismiss Cintas' motions to compel arbitration.

According to Respondents, the issue of where they may arbitrate is squarely within the authority of the Arbitrator. *See Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444, 452-53 (2003) (holding that aside from certain "gateway matters," such as the validity and applicability of the arbitration clause, issues of contract interpretation and arbitration procedures should be left to the arbitrator to decide); *Richard C. Young & Co., Ltd. v. Leventhal*, 389 F.3d 1, 4-5 (1st Cir. 2004) (holding that a dispute over the interpretation of a forum selection clause must be decided by the arbitrator: "(Once the dispute between the parties is concededly arbitrable, determining the place of the arbitration is simply a procedural matter and hence for the arbitrator").

Respondents argue that this Court should dismiss the motions to compel for lack of subject matter jurisdiction, because "neither this Court nor any of the 70 courts where these petitions were originally filed has subject matter jurisdiction to decide in the first instance the clause construction issue at the heart of Cintas' 70 petition cases." Respondents' Brief at 12. In other words, Respondents argue that it is

clear that they must arbitrate, the only question is where, and that is a question for the arbitrator to answer. In support of this theory, Respondents cite a case in which a petition to compel arbitration was dismissed under Federal Rule of Civil Procedure 12(b)(1), because the court found that the adverse party had not failed, neglected, or refused to arbitrate. *Hartford Accident & Indem. Co. v. Equitas Reinsurance Ltd.*, 200 F. Supp. 2d 102, 104 (D. Conn. 2002). This case does not support Respondents' argument, because the Court has held that Respondents have failed, neglected or refused to arbitrate. Next, Respondents contend that the Court could dismiss under Rule 12(b)(3), on the ground that the issues raised by Cintas are reserved for the arbitrator. They cite several out-of-circuit district court cases in support of this theory. *See, e.g., Metropolitan Life Ins. Co. v. O'Malley*, 392 F. Supp. 2d 1042, 1044-45 (N.D. Ill. 2005). However, that case did not involve dismissal of a petition to compel arbitration, and Respondents mischaracterize its holding. The case stands for the straightforward principle that where the parties have agreed to arbitrate, federal court is an improper venue and the case should be dismissed; it did not hold that the location of arbitration must be decided by the arbitrator and not the Court, as Respondents suggest. *See* Respondents' Brief at 13.

Further, the 1,800 Respondents are <u>not</u> parties to the ongoing San Francisco arbitration. At most, 102 Veliz Plaintiffs compelled to arbitrate by this Court are part of the ongoing arbitration.[6] The arbitrator

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[6] Cintas argues that only ten *Veliz* Plaintiffs are parties to the arbitration, because only ten individuals were named in the Demand for Arbitration. However, these individuals purported to demand arbitration on behalf of themselves and all others

held in the initial clause construction award that the 1,900 opt-in Plaintiffs could not become parties to the arbitration in this district, because that would be inconsistent with the place of-arbitration term in their agreements. Although this Court has remanded to the arbitrator for clarification of the award (and Cintas has appealed that Order), that portion of the award was not unclear, and the arbitrator may not revisit it. Thus, the interpretation of *Respondents'* arbitration agreements is not before the arbitrator, and the *Bazzle* line of cases is inapposite.

Respondents also argue that this Court should invoke the doctrine of judicial estoppel. This doctrine bars litigants from asserting inconsistent positions in the same litigation. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001). According to Respondents, "Cintas' current position that the clause construction issue should be resolved in 70 different jurisdictions is clearly inconsistent with its previous position that the clause construction issue should be decided in the San Francisco arbitration." Respondents' Brief at 16. Cintas asserts that this argument misrepresents the record, in that it has always maintained that there can be no class or collective arbitration because the place-of-arbitration term in each agreement is enforceable. "Thus, while Cintas agreed that, if the AAA held clause construction proceedings as to the ten (10) individual named claimants . . . it could do so in San Francisco, it was certainly not giving up any statutory rights in the bargain—and certainly gave up nothing vis-a-vis

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similarly situated—which would arguably include all 56 Veliz Plaintiffs compelled to arbitrate. The *Veliz* Plaintiffs never moved for leave to amend the Demand for Arbitration. *See* Dosker Decl. at ¶ 17; *id.* at Ex. 6.

those who are now Respondents here but who have never been parties to the *Veliz* Arbitration." Cintas' Reply at 14. The Court agrees with Cintas and will not apply judicial estoppel here: the fact that Cintas agreed to clause construction proceedings in San Francisco for the original group of Veliz Plaintiffs compelled to arbitrate is not inconsistent with its current position that the opt-in Plaintiffs (MDL Respondents) should not be allowed to arbitrate collectively in San Francisco.

Moreover, given that Respondents have refused to arbitrate with the meaning of section 4, the transferor courts do have jurisdiction over the petitions to compel arbitration, and Respondents' Motion to Dismiss must be denied on the merits.

Thus, Respondents' Motion to Dismiss the 70 MDL cases is DENIED.

CONCLUSION

The Court holds that Respondents are refusing to arbitrate within the meaning of section 4 of the FAA.

Accordingly, the Court finds and rules as follows:

(1) Common discovery and other coordinated pretrial proceedings in the cases listed on Schedule A have been completed. All remaining issues are case-specific, and best determined by the transferor court.

(2) The cases will not benefit from further coordinated proceedings as part of MDL 1781, and are ready to be remanded to their respective transferor jurisdictions.

Pursuant to Rule 7.6 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the Court

issues its Suggestion of Remand Order in the cases listed on Schedule A.

The Clerk is ORDERED to provide copies of this Order to the Clerk of the Judicial Panel on Multidistrict Litigation and to the clerks of the transferor district courts.

IT IS SO ORDERED.

Dated: 4/10/07 /s/ Saundra Brown Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

APPENDIX D

List of Respondents to Petition for Writ of Certiorari Before Judgment

Robert J. Abel, David J. Abrahamsen, Nicholas Ackerman, Randall Adams, Jack Addison, Donald Adkins, Joseph W. Adolph, Bradley Agler, Jason Agostini, Vince Agozzino, Daniel E. Ainsworth, Ryan Albright, Roberto Carlos Alegria, Thomas Eugene Alert, Chad Alfred, Brad Alioto, Alice Allen, Joseph Allen, Judd Allen, Sean Allen, Jonathan Allred, Michael Lee Allshouse, Gary Allspach, Louis Alves, Christopher Ames, Ryan Ammon, Troy Amott, Issac Anaya, John Anaya, Darren Mitchell Anderson, Jeffrey Anderson, Matthew Anderson, Michael Anderson, Randy Anderson, Robert D. Anderson, Zebulan (Zeb) Anderson, Nathan J. Andree, Joe Andrews, Robert Andrews, John O. Ansink, Jr., Gus Aranegui, Rick Arango, Rick Arms, Bryan Armstrong, Heriberto Arroyo, Sijifredo Arroyo, Stephen Paul Artley, Harold W. Arvin, Ronald Arvizu, Brian Ash, James Atkins, Matthew Augustin, Travis M. Ault, Guillermo Avalos, Ivan Edward Avery, Hector Avila, Jeffrey Aybar, Sean Bachman, Kenneth Bachmann, Gary Badgerow, Wayne C. Bailey, Brian Baker, Joshua Baker, Daniel S. Baldwin, David Baldwin, Joe L. Banks, Kenneth W. Baptist, Sam Barbarotta, Donald Ray Barfield, Stephen Barlow, Justin Barnard, Gregg Barnes, Relton Barnes, Jeff Barr, Jason Barrett, Michael Bartz, Donnie Bass, Dennis Bassett, Harold D. Bauer, Jr., Casey Baughman, Christopher Baumer, Aaron Baxter, Kevin Beal, Robert W. Bean, Everett G. Beard, Mitchell Aron Beard, Joseph Beck, Mark Beckham, Patricia Bedard, Wade Bell, William Christopher Bell, Daniel Lee Bender, Stephen C. Benecke, Tyrone Charles Benedict,

Josh Benson, Hank Bentley, John Bereza, Joseph E. Berlage, Brent Berna, Paul Berry, Warren Bersch, William Bertrand, Joseph D. Biase, John D. Bickham, Warren Bickmeyer, Conrad Bierach, Gregory Cole Bigbee, Jason Scott Bigelow, David W. Bippus, Janice M. Bishop, Brooke A. Bissin, William J. Bitz, Michael Bivins, Jessica Lynn Blackburn, Matthew L. Blackman, James Kurt Blackmon, Christopher Blaha, Philip Daniel Blaisdell, Thomas Flynn Blake, Bernard L. Blanchard, Noe Blanco, Chad M. Blenden, Jay Blessing, Craig Bobeck, Brian Bobo, Kenneth Bobola, George Bodenmiller, David Bohn, Alfonso Bolden, Silas Ray Bolen, Jr, Jason Boman, Daniel J. Bonacorsi, Jackie Ray Bonds, Jr, Kathleen Booker, Daniel Booth, Scott Borawski, Kevin Borrmann, Kevin Boslaugh, Tony L. Bostick, Noah Bostwick, John S. Bova, Jr., Jonathon James Bow, Kevin Bower, Robert F. Bowles, Jr, Randall Bowles, Daryl Bowman, Ricko Lonnell Boyd, Michael P. Boyle, Kevin Boynton, Bob Braaten, Ralph Bracamontes, Tory Bradley, Dean Brandt, Thomas Scott Branscome, Michael Brantley, Michael C. Bray, James Brewster, Larry Daniel Bridges, Thomas Allan Bridges, Joseph Brien, Robert Brinlee, Brandon Brinning, Manuel G. Briseno, Mark Bristow, Bobby Brite, Tony Britt, Stephen Brock, Dezmon Brook, Antoine Alonzo Brooks, Chris Brooks, Stephen Brooks, Chris Brown, Christopher Brown, Danny L. Brown, Jonathan Brown, Gregory Brown, Jr, James Brown, Jr, Michelle Brown, Cory Brown-Donald, Mary E. Brown-Phillips, Jennifer L.H. Browning, Stuart Browning, Stuart Bruno, Gregory Brunson, Jason Albert Bryam, Gregory S. Bryant, Brian Buddie, Brian Buen, Brandon Eugene Bullard, Jason Bunderson, Robert Burcke, Scott Burgess, Vince McClain Burghart, Christopher Burke, Donald Burke,

Michael Burke, James Allen Burress, Jonathan Burt, Crezone Burton, David J. Bush, Esequiel Bustamante, Dustin Lee Butler, Jeffrey A. Butler, Christopher C. Buttner, Greg M. Buuck, Jorge Cabrera, Chad Jason Cady, Lucas Hunter Cagle, Peter James Cala, Scott Patrick Caldwell, John Callahan, Dean Calvin, Christopher Camden, Bruce Cameron, Chris Cameron, Michael H. Campion, Gustovo G. Campos, Leonel Cantu, III, Bryan Carelock, Eric Carney, Sr., Boyd Carr, Ray Anthony Carr, Gerardo Carrier, Javier Carrillo, Nelson Carter, Jr., Kevin Carter, Matthew S. Carter, Terry Carter, Ricky Carthon, Kenneth Caruso, Jason Cash, Dana Casselman, Everett W. Cassens, Richard Castens, Don Castleberry, Clinton Caton, Michael Caudill, Tina A. Cavagnaro, Craig Robert Cavanaugh, Jesse Cavazos, Marcos Cervantes, Mark Chainuck, Scott Chalmers, Broderick Chambers, Sr., Veronica Chambers, Brent Chapman, David Chapman, Chad Chappell, Daniel Charatin, Davide Checchia, Larry D. Chesser, William Chew, Humberto Chirino, Doug Choate, Eugene Christensen, Dennis L. Churches, Timothy Cingel, Michael S. Cintron, Chris Citrano, Brian Clark, Gerald Clark, Jr., Michael D. Clark, Shon D. Clark, William W. Clayton, Jason Cleaves, Sr., Daniel Clouse, James Cobble, Colin Cockreham, Steven M. Coe, Marc Colavito, Jeffrey Colby, Keith Colca, Dennis Cole, Robert Colihan, Edwin Upeano Collazo, Bobby Collins, French Collins, Orlando Colunga, Kevin Comaty, Gary Combs, James W. Conigland, Marty D. Conley, James Connelly, Michael Conner, Matthew Conti, Carlos Javier Contreras, Javier Contreras, Ricardo Contreras, Merle Conway, David Cook, Jason M. Coombs, Erinn Cooper, Daniel Cooper, III, Leon Allen Cooper, Shirlene Cooper, James Andrew Cope, Jr., Lonnie

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Heather L. Simpson, Joe C. Sipres, Glen Arthur Sizemore, David Skuratovich, William Slade, David Slay, Steven Sledz, Richard Sloane, Ray Slocum, Ralph Slone, Jr., Terry Smeltzer, Almond Smiley, Richard (Son-Arlieta) Smith, Barbara Smith, Benjamin N. Smith, Bruce P. Smith, Carll Smith, Carolton Lamar Smith, Robert Clayton Smith, Daniel Smith, Darrin Smith, Glenn Smith, Sam Smith, III, James Earl Smith, Jonathan Smith, Kelly Smith, Michael Smith, Michael R. Smith, Michael S. Smith, Michael W. Smith, Patrick Smith, Paul Douglas Smith, Phillip A. Smith, Scott Allen Smith, Terrence Y. Smith, Sr., Vincent Smith, Walter Smith, Richard Snell, Greg Snyder, Jaime Solano, Juan Solorio, Alvaro Solorzano, Allen Soroka, Thomas Sossong, Gregory T. Sothern, Daniel Todd Sotherland, James Spinale, Randy Spivey, Jeff Springston, Barry St. John, James Ervin Staggs, Kevin Staggs, Fred Stamper, Michael Stancil, Shade Stapels, Michael Stark, Aaron Starkey, David Starnes, Garett Starr, Tommy Stearns, Jesse L. Steel, Donald Wayne Steele, John Stefani, Jared Stefanick, William Steiner, Eric Stellato, Jeff Stephens, Randall Stephens, Clarence Stewart, Dexter Still, Miguel Stillfield, Bryan Stokes, Lavonzelle Stokes, Keith Stoklosa, Michael Stoklosa, John Stone, Tracy Stoppel, Kenneth S. Storie, John Story, Christopher Strader, Chris Straka, Derek Streng, Carl D. Stroup, Jarred D. Stuckey, Tom Sturgis, Rodney Sturkie, Shiloh Stutz, Wes Sudol, Robert Sullivan, Tony Summers, Max Sumpter, III, Trevor Sumption, John Michael Sutter, Daniel T. Sweet, Todd Swenson, Steven T. Swett, Jr., Richard Sword, George Sylvester, I, Chris Sylvia, David Tackett, Ralph E. Talbert, Jr., Stephen Tantillo, Joseph Tapia, Thomas Tarantola, Christopher Tatum, John Logan Taunton, Luis Taveras, Donald E. Taylor,

Kurt H. Taylor, Eric D. Teague, Sandy Tenney, Jeffrey K. Tepe, Antwan Terrell, Thomas Theis, John Theisman, James Theriault, Bernard Therrien, Michael Thoma, Christopher W. Thomas, Ernest L. Thomas, Gerry Thomas, George Thomas, III, Jack Darren Thomas, James Thomas, Jr., Theodore Thomas, Joe Thompson, Mark Thompson, Robert Thompson, Tommy Thompson, Wayne Thompson, Larry Thornhill, II, Jason Tiegen, Tony Demario Tillison, Steven Tilseth, Edward E. Tisdel, Nicholas Tokish, Scott Tomaszewski, John P. Tomkinson, Brian Tomkins, Jimmy Ray Tooley, Marc A. Toone, Julian Torrez, Leonard R. Torris, III, Christopher Tow, Jason Travis, Harold Treft, Vassandral Trimble, Keith Truax, Scott Truman, Cary Tucker, John Tully, Jr., Daniel Scott Turner, Troy Tusing, John Rile Tussey, Derrel Twitty, Peter Tyrka, Aaron R. Uballez, Gregory Steven Uber, Hector Ulloa, Matthew Underwood, Jobette T. Upshaw, Kenneth Urbanczyk, John E. Uschold, Ulualo Vaitu'u, Jr., Charles Vallette, Ralph VanAuken, Adam Vance, Christopher John Vanderkuyl, William Ed Vanderpool, Steve Vandervort, Juan Vasquez, Ruddy Vasquez, Jeff Vassau, Fabian Vazquez, Jaime Vega, Gary Venable, Kevin Venable, Gerardo Vergara, Stephen Vernille, Keith Verucchi, Brena Vesey, Todd Vetsch, Johnnie Lee Vick, Dave Vickless, Bernard Villapudua, Ignacio Villegas, Tuan Phi Vo, Greg Von Coppenolle, Todd Voss, Victor Vulaj, Keith Wakefield, Michael Waldorf, Jeffrey R. Waldschmidt, Anthony S. Walker, Frank Thomas Walker, Willie Walker, Andrew Wallace, Jason Wallace, Jeff Walston, Lynn Dee Walters, Edwin Ward, Andre L. Warner, Monte Washington, Sharmane Quontrel Washington, Valtorian Evander Washington, Tade L. Wasmer, Thomas Wasylik, Bradley Steven Watkins, Demond Watson, Thomas

Webb, Matthew Jason Weeks, Fred K. Weinert, Stephen Weisbecker, Matthew Weiss, John Wells, Cade T. Wenner, Clint West, Michael West, Steve Westover, Douglas Wetoszke, Jeremy Edward Whalen, David Wheaton, James Richard Wheeler, Frederick D. Whitcomb, Anthony White, Brian White, James White, Joseph White, Jr., Richard Allen White, Jr., Lonnie White, Matthew White, Phillip Joel White, Jessy Whitener, Jay R. Whiteoak, Charles Lee Whitfield, Matthew Wick, Steve Wickman, Steven Wiehl, Raiford F. Wiggins, James Wildeman, Andre Williams, Barry C. Williams, Candice Williams, Candice Williams, Charles Anthony Williams, Christopher Williams, Damon Williams, Edward Williams, James Williams, Jeffrey Lee Williams, Joel Williams, Kelan L. Williams, Kelan L. Williams, Larry James Williams, Paul Williams, Robert Williams, Sam Williams, Shannon Lee Williams, Rufus L. Willis, Brandon Wilmoth, David Wilson, Jason L. Wilson, Ronald Wilson, Jr., Robert N. Wilson, Robert Reed Wilson, Ronald Joseph Wilson, William A. Wilson, Jeffrey Dean Wilton, Ronald Winans, Jr., John Winberry, Randy L. Windom, Ryan Glenn Wingo, Richard Witoske, Aaron Paul Witty, Jeffrey Craig Wobbrock, Erik Wolf, JoAnn M. Wolf, Jay Christopher Wolfe, Timothy Wolner, Lendon Wood, Mark Dolton Wood, Mark Dolton Wood, Michael Lane Wood, Robert Wood, Robert Lane Wood, Kenneth E. Woodfin, Earl C. Woods, Jr., Mark William Woodson, Ronald Woody, Gene Wookey, Eric Woolwine, Mark Richard Wragg, Jerry Wright, Terry Wright, Arthur Xaros, Gary Yarbrough, Charles B. Yates, Louis Ybarra, Cesar Ymaya, Robert Yontz, John W. Young, Jr., Richard Young, Stefan Youngbrandt, William Yowell, Michael Zacharias, Aaron M. Zadnick, Aaron M. Zadnick, Bradley Zall,

Fernando Zapata, Ruth Ann Zarbaugh, Edwin Zavala, Hector Zayas, Jr., Moises Zeda, Oscar Zermeno, Ryan Ziglar, Sarah R. Zygarlicke, Michael Zytkowicz

APPENDIX E

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA

[Filed March 19, 2003]

Case No. C 03-1180

PAUL VELIZ, JAMES WHITE, MARK CHAINUCK, JEFF JAY, TADE L. WASMER, AARON M. ZADNICK, BOBBY C. HODGE, NOEL LLOYD, KELLY SMITH, EARL C. WOODS JR., WAYNE EDWARDS, WILFREDO HUERTAS JR., AMBER KELLY, DEREK SAMUELS, and SAM WILLIAMS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CINTAS CORPORATION, an Ohio corporation; PLAN ADMINISTRATOR for the Cintas Partners' Plan; and DOES 1-25, inclusive,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

(1) CLASS ACTION FOR VIOLATION OF THE FAIR LABOR STANDARDS ACT, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT, CALIFORNIA LABOR CODE, ILLINOIS MINIMUM WAGE LAW, MICHIGAN MINIMUM WAGE LAW, AND NEW JERSEY MINIMUM WAGE AND HOUR LAW; AND

(2) REPRESENTIVE CLAIM AND CLASS ACTION FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *et seq.*

CLASS ACTION

DEMAND FOR JURY TRIAL

On behalf of themselves, all others similarly situated, and the general public, plaintiffs allege as follows:

GENERAL ALLEGATIONS

1. Plaintiffs are customer service representatives who have worked long unpaid overtime hours for Defendant Cintas Corporation ("Cintas") delivering products to Cintas customers in California and different parts of the United States. Cintas has deliberately chosen to misclassify Plaintiffs as "exempt" employees for the purpose of federal and state overtime law, in order to reap windfall profits of millions of dollars per year that Cintas would owe if Cintas properly paid Plaintiffs for all overtime hours at the legally mandated overtime rates.

2. Plaintiffs Paul Veliz, James White, Mark Chainuck, Jeff Jay, Tade L. Wasmer, Aaron M. Zadnick, Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods Jr., Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, and Sam Williams (collectively "Plaintiffs") bring this action against Defendant Cintas and Defendant Plan Administrator of Cintas Partners' Plan ("the Plan"). Plaintiffs bring claims individually and as a collective action under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b), and individually and as a class action, under

Fed. R. Civ. P. 23(b)(3) and applicable state labor laws, on behalf of current and former Cintas employees who worked as Service Sales Representatives, Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers (hereinafter "Service Sales Representatives" or "Class Members"), none of which are positions that are exempt from the overtime provisions of the FLSA or the respective wage and hour laws of the states in which plaintiffs are or have been employed. Class Members have worked for Cintas in facilities throughout the United States.

3. Plaintiffs allege on behalf of themselves and all similarly-situated Service Sales Representatives that Cintas unlawfully classified Plaintiffs as exempt from overtime payments under federal and state laws and/or failed and refused to pay overtime premiums to Plaintiffs and members of the Plaintiff Class for all overtime worked, notwithstanding that Plaintiffs and members of the Plaintiff Class are not and have not been exempt and are and have been entitled to overtime pay, for overtime worked, and further that Cintas failed to record and maintain time records as required by law. Plaintiffs also allege that Defendants have violated the Employment Retirement Security Act of 1974 ("ERISA") by failing to record and maintain accurate records and by failing to credit service as required under ERISA. In addition, the Plaintiffs who have worked in California allege that Defendants' failure to pay overtime, to pay wages when due, to maintain proper records and to credit services as required under state and federal law constitute unlawful business practices in violation of California's Unfair Competition Act, Business & Professions Code § 17200, *et seq*.

4. Defendants' practices violate of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, California Business & Professions Code § 17200, et seq., and the respective wage and hour laws of the States of California, Illinois, Michigan, and New Jersey, among others. The collective action claims are for overtime compensation, liquidated damages and/or interest, and attorneys' fees and costs, under the FLSA, 29 U.S.C. §§ 207, 216(b). Through their class-wide claims, plaintiffs seek injunctive and declaratory relief, compensation and credit for all uncompensated work required, suffered, or permitted by Cintas, liquidated and/or other damages as permitted by applicable law, restitution and disgorgement of all benefits Defendants enjoyed from their unlawful business practices, and attorneys' fees and costs.

JURISDICTION AND VENUE

5. The Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because plaintiffs' claims arise under two federal statute, specifically, the FLSA, 29 U.S.C. § 201, *et seq.*, and the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.* Section 216(b) of the FLSA, 29 U.S.C. § 216(b), and Section 502 of ERISA, 29 U.S.C. § 1132 also confer jurisdiction over this action. The Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) and Local Rule 3-2 because Defendants are licensed to do business and are doing business in California, *inter alia*, in facilities in San Francisco, Oakland, South

San Francisco, Santa Rosa, San Leandro, Antioch, Emeryville and elsewhere in the Northern District of California, and because a substantial portion of the acts, events and omissions giving rise to this action occurred in the District.

INTRADISTRICT ASSIGNMENT

7. Assignment to the San Francisco/Oakland Division is proper because a substantial portion of the acts, events, and omissions giving rise to this action occurred in San Francisco, Oakland, South San Francisco, Santa Rosa, San Leandro, Antioch, and Emeryville, all of which are within the San Francisco/Oakland Division of this District.

PARTIES

A. PLAINTIFFS

8. Plaintiff Paul Veliz ("Veliz") is a resident of Los Angeles County, California. Veliz worked for Defendants as a Service Sales Representative in the Pico Rivera facility in Los Angeles County from approximately December, 1998 through February, 2003. As a Service Sales Representative, Plaintiff Veliz regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Veliz has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

9. Plaintiff James White ("White") is a resident of Riverside County, California. White worked for Defendants as a Service Sales Representative in the Ontario facility in San Bernadino County from

approximately April, 2003 through November, 2003. As a Service Sales Representative, Plaintiff White regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff White has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

10. Plaintiff Bobby C. Hodge ("Hodge") is a resident of Genesee County, Michigan. Hodge worked for Defendants as a Service Sales Representative in the Flint facility in Genesee County from approximately August, 2000, through November 2002. As a Service Sales Representative, Plaintiff Hodge regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Hodge has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

11. Plaintiff Noel Lloyd ("Lloyd") is a resident of Tuscola County, Michigan. Lloyd worked for Defendants as a Service Sales Representative in the Flint facility in Genesee County from approximately April, 1999, through November 2002. As a Service Sales Representative, Plaintiff Lloyd regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times,

Plaintiff Lloyd has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

12. Plaintiff Kelly Smith ("Smith") is a resident of Genesee County, Michigan. Smith worked for Defendants as a Service Sales Representative in the Flint facility in Genesee County from approximately April 1999 through November 2002. As a Service Sales Representative, Plaintiff Smith regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Smith has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

13. Plaintiff Earl C. Woods Jr. ("Wodds") is a resident of Genesee County, Michigan. Woods worked for Defendants as a Service Sales Representative in the Flint facility in Genesee County from approximately December 1999 through November 2002. As a Service Sales Representative, Plaintiff Woods regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Woods has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

14. Plaintiff Mark Chainuck ("Chainuck") is a resident of Will County, Illinois. Chainuck worked for Defendants as a Service Sales Representative in the Romeoville facility in Will County from approxi-

mately May 2001 through December 2001. As a Service Sales Representative, Plaintiff Chainuck regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Chainuck has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

15. Plaintiff Jeff Jay ("Jay") is a resident of Cook County, Illinois. Jay worked for Defendants as a Service Sales Representative in the Schaumburg facility in Cook County from approximately March, 1999, through September, 2002. As a Service Sales Representative, Plaintiff Jay regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, PlaintiffJay has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

16. Plaintiff Tade L. Wasmer ("Wasmer") is a resident of Lake County, Indiana. Wasmer worked for Defendants as a Service Sales Representative in the Romeoville facility in Will County from approximately December, 1998, through February, 2002. As a Service Sales Representative, Plaintiff Wasmer regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all

relevant times, Plaintiff Wasmer has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

17. Plaintiff Aaron M. Zadnick ("Zadnick") is a resident of DuPage County, Illinois. Zadnick worked for Defendants as a Service Saleis Representative in the Romeoville facility in Will County from approximately July, 2001, through February 2002. As a Service Sales Representative, Plaintiff Zadnick regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Zadnick has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

18. Plaintiff Wayne Edwards ("Edwards") is a resident of Essex County, New Jersey. Edwards worked for Defendants as a Service Sales Representative in the Piscataway facility in Middlesex County from approximately April, 1999 through March, 2001. As a Service Sales Representative, Plaintiff Edwards regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Edwards has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

19. Plaintiff Wilfredo Huertas Jr. ("Huertas") is a resident of Bergan County, New Jersey. Huertas worked for Defendants as a Service Sales Representative in the Piscataway facility in Middlesex

County from approximately September, 1998 through September, 2000. As a Service Sales Representative, Plaintiff Huertas regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Huertas has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

20. Plaintiff Amber Kelly ("Kelly") is, resident of Monmouth County, New Jersey. Kelly worked for Defendants as a Service Sales Representative in the Piscataway facility in Middlesex County from approximately April 15, 2002 through November 1, 2002. As a Service Sales Representative, Plaintiff Kelly regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Kelly has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

21. Plaintiff Derek Samuels ("Samuels") is a resident of Essex County, New Jersey. Samuels worked for Defendants as a Service Sales Representative in the Piscataway facility in Middlesex County from approximately June, 1998 through February, 2002. As a Service Sales Representative, Plaintiff Samuels regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant

times, Plaintiff Samuels has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

22. Plaintiff Sam Williams ("Williams") is a resident of Essex County, New Jersey. Williams worked for Defendants as a Service Sales Representative in the Piscataway facility in Middlesex County from approximately June, 1998 through December, 2001. As a Service Sales Representative, Plaintiff Williams regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. At all relevant times, Plaintiff Williams has been a participant in the Cintas Partners' Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

23. Each of the named Plaintiffs by the filing of this Complaint consents to sue with respect to each such Plaintiff's FLSA claim for relief against Cintas, pursuant to 29 U.S.C. §216(b), and hereby seeks relief under that provision. Hundreds of other similarly situated Service Sales Representatives would join this action if given proper notice and a reasonable opportunity to participate. Plaintiffs will file written FLSA Consents to Sue on behalf of additional FLSA collective action members as this litigation progresses

B. DEFENDANTS

24. Defendant Cintas Corporation is an Ohio corporation which, at all relevant times, has done business and continues to do business in the Northern District of California and has committed and

continues to commit the unlawful acts alleged in this Complaint in San Francisco County and elsewhere.

25. The Cintas Partners' Plan is an employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. §1 002(2), and an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3).

26. At all relevant times, defendant Cintas Corporation has been the plan sponsor of the Cintas Partners' Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(21)(A). Notwithstanding that the governing instrument of the Cintas Partners' Plan designates a Plan Administrator as the named fiduciary, as described below, with power to administer, interpret, construe and apply the terms of the plans, at all relevant times, Cintas Corporation, through employees other than members of the Plan Administrator, has exercised actual responsibility, authority and/or control with respect to these functions and others. In particular, these employees of Cintas Corporation, other than members of the Plan Administrator, have exercised actual authority and control over the following under the Cintas Partners' Plan: determination of employees' hours of service under the terms of the plan; determination of employees' status as participants under the terms of the plan; determination of plan participants' vesting status under the terms of the plan; determination of employees' accrued benefits under the terms of the plan; determination of employees' eligibility for benefits under the terms of the plan; deciding to use Cintas payroll records to determine hours of service under the terms of the plan; record-keeping with regard to hours of service; reviewing hours of service under the plan; preparing agendas for and chairing

meetings of the committees that constitute the Plan Administrator of the plan; selecting and obtaining advice from attorneys regarding legal issues arising in the administration of the plans; selecting auditors to carry out ERISA-mandated plan audits; and/or establishing and carrying out document retention policies for the plan. In addition, on information and belief, the Plan Administrator of the Cintas Partners' Plan granted authority to Cintas Corporation to act on its behalf in approving allocations and/or distributions under the terms of the plan, which approvals include determinations as to employees' participation, vesting, and benefit accrual under the terms of the plan. By reason of these facts, and possibly others, at all relevant times, defendant Cintas Corporation has exercised actual responsibility, authority, and/or control with regard to the management and/or administration of the Cintas Partners' Plan and/or has had discretionary authority or responsibility in the administration of that plan. Cintas Corporation's actual exercise of responsibility, authority, and/or control and/or its having of discretionary authority or responsibility has included, but not been limited to, with regard to the crediting of hours of service under those plans and the determination of the amount of contributions to be made on behalf of each participant.

27. On information and belief, pursuant to the governing instrument of the Cintas Partners' Plan, defendant Plan Administrator of the Cintas Partners' Plan was appointed by the Board of Directors of Cintas Corporation and at al relevant times has been and continues to be the administrator of the Cintas Partners' Plan, within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), the named fiduciary of that plan within the meaning of ERISA §

402(a)(1), 29 U.S.C. § 1102(a)(1), and a fiduciary of that plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

28. Plaintiffs are ignorant of the true names and capacities of defendants sued in this Complaint as DOES 1 through 25, inclusive, and therefore sue these defendants by such fictitious names and capacities. Plaintiffs will amend this complaint to allege their true names and capacities when learned. Plaintiffs allege that each of the defendants named as DOES was in some manner responsible for the acts and omissions alleged in this Complaint. Plaintiffs will ask leave of this Court to amend the complaint to allege such responsibility when same shall have been ascertained. Plaintiffs are further informed and believe and on that basis allege that at all times relevant, some or all of the fictitiously-named defendants were agents or employees who have acted within the course and scope of that agency or employment and/or co-conspirators of one or more of the named defendants. Plaintiffs are further informed and believe, and on that basis allege, that some or all of the fictitiously-nmed defendants aided and assisted the named defendants in committing the wrongful acts alleged in this Complaint, and that plaintiffs' damages were legally caused by each such defendant.

C. CLASS ACTION ALLEGATIONS

29. *The Plaintiff Class (ERISA Claims)*: Plaintiffs bring the First and Second Claims for Relief for violations of ERISA as a nationwide class action pursuant to Fed. R. Civ. P. 23(a) and (b)(1) and/or (b)(2) as representatives of a proposed Plaintiff Class of employees of Cintas throughout the United States who were or are employed as Cintas Service Sales

Representatives, including Service Sales Repres ntatives, Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers, at any time within the applicable statute of limitations period. All Plaintiffs are members of the Class on whose behalf all claims alleging violations of ERISA are brought. These ERISA claims do not include any claims for relief arising out of any periods of employment in any position other than as a Service Sales Representative.

30. The Plaintiff Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis, allege that during the Class period, in excess of three thousand four hundred (3,400) persons have been employed by Defendant Cintas as Service Sales Representatives. Although the exact number and identities of Class and Subclass members are unknown to Plaintiffs at this time, this information is easily ascertainable from Cintas through discovery of its payroll and personnel records.

31. Questions of law and fact common to the Plaintiff Class as a whole include, but are not limited to, the following.

(a) Whether Defendants have failed and/or continue to fail to maintain accurate records of actual time worked by the Plaintiffs anal prospective Class members;

(b) Whether Defendants have failed and/or continue to fail to record or report all actual time worked by the Plaintiffs and prospective Class members;

(c) Whether Defendants have failed and/or continue to fail to provide accurate wage statements

itemizing all actual time worked and wages earned by the Plaintiffs and prospective Class members;

(d) Whether Defendants have violated and continue to violate ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1), as alleged herein;

(e) Whether the Cintas Partners Plan has credited Plaintiffs and prospective Class members with all hours for which they were paid or entitled to be paid, as required by ERISA;

(f) Whether the Pension Plan has fredited Plaintiffs and prospective Class Members with all hours for which they were paid, or entitled to be paid, as required by ERISA; and

(g) Whether Defendants have violated ERISA by their failure to credit Plaintiffs and prospective Class members with all hours for which they were paid or entitled to be paid.

32. *Nationwide FLSA Collective Plaintiffs (FLSA Claims)*: Plaintiffs bring the Third Claim for Relief for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who were, are, or will be employed by defendant Cintas nationwide as Service Sales Representatives throughout the United States, including Service Sales Representatives, Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers, at any time within the applicable statute of limitations period., who have not been compensated at one and one-half times the regular rate of pay for all work performed in excess of forty (40) hours per work week. These FLSA claims do—not include any claims for unpaid overtime arising out of any periods of

employment (1) in any position other than as a Service Sales Representative, and/or (2) that were the subject of a release of claims in *Vaca v. Cintas Cintas Corporation*, Case No. BC250459, and/or *Barajas v. Cintas Sales Corporation*, Case No. BC261276, filed the Superior Court of California for the County of Los Angeles.

33. Questions of law and fact common to the Class as a whole include, but are not limited to, the following:

(a) Whether Cintas unlawfully failed and continues to fail to pay overtime compensation in violation of the FLSA, 29 U.S.C. § 201, et seq.;

(b) Whether Nationwide FLSA Collective Plaintiffs and whether the representative Plaintiffs of Service Sales Representative are non-exempt from the entitlement to overtime compensation for overtime hours worked under the overtime pay requirements of FLSA;

(c) Whether Cintas' policy and practice of classifying as exempt from overtime entitlement under the FLSA and whether Cintas' policy and practice of failing to pay overtime to Service Sales Representative violates applicable provisions of the FLSA;

(d) Whether Cintas' failure to pay overtime to its non-exempt Nationwide FLSA Collective Plaintiffs was willful within the meaning of the FLSA;

(e) Whether Cintas failed and continues to fail to maintain accurate records of actual time worked by the Nationwide FLSA Collective Plaintiffs and prospective Nationwide FLSA Collective Plaintiffs;

(f) Whether Cintas failed and continues to fail to record or report all actual time worked by the Nationwide FLSA Collective Plaintiffs and prospective Nationwide FLSA Collective Plaintiffs;

(g) Whether Cintas failed and continues to fail to provide accurate wage statements itemizing all actual time worked and wages earned by the Nationwide FLSA Collective Plaintiffs and prospective Nationwide FLSA Collective Plaintiffs;

34. The Third Claim for Relief for violations of the FLSA may be brought and maintained as an "opt-in" collective action pursuant to § 16(b) of FLSA, 29 U.S.C. § 216(b), for all claims asserted by the Representative Plaintiffs of the Nationwide FLSA Collective Plaintiffs (FLSA claims), because the claims of the Plaintiffs are similar to the claims of the members of the prospective Nationwide FLSA Collective Plaintiffs.

35. Plaintiffs and Nationwide FLSA Collective Plaintiffs are similarly situated, have substantially similar job requirements and pay provisions, and are subject to Defendant Cintas' common practice, policy or plan of refusing to pay overtime in violation of the FLSA and unlawfully characterizing Nationwide FLSA Collective Plaintiffs and members of the FLSA Class as exempt employees.

36. *California Subclass (California Labor Code and Wage Order Claims)*: Plaintiffs Paul Veliz and James White bring the Fourth Claim for Relief for violation of California Labor Code § 1194 and California Industrial Welfare Commission Occupational Wage Orders Nos. 4 and/or 7 (Title 8 Cal. Code of Reg. § 11040) and the Fifth Claim for Relief for violation of the California Business & Professions

Code, § 1720Q, *et seq.*, as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of all Service Sales Representatives, including Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers employed by Cintas in the State of California, during the applicable limitations period, whom Cintas refused to compensate for all overtime work performed in excess of eight (8) hours per day and/or forty (40) hours per workweek. Plaintiffs also assert class-wide claims under Labor Code §§ 203, 226.7, and 558, alleging that Cintas failed to pay wages when due, failed to provide paid rest periods as required, and wilfully violated all aspects of California wage law. Plaintiffs Paul Veliz and James White are members of the California Subclass on whose behalf all claims alleging violations of the California Labor Code, the applicable Wage Orders, and the California Business & Professions Code are brought. The claims of the California Subclass do not include any claims for unpaid overtime arising out of any periods of employment (1) in any position other than as a Service Sales Representative, and/or (2) that were the subject of a release of claims in *Vaca v. Cintas Cintas Corporation*, Case No. BC250459, and/or *Barajas v. Cintas Sales Corporation*, Case No. BC261276, filed the Superior Court of California for the County of Los Angeles.

37. The California subclass is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that currently at least three hundred (300) persons are employed by Defendant Cintas as Service Sales Representatives in California, and that given turnover, the class is more numerous than that.

38. Common questions of law and fact exist as to members of the California Subclass that predominate over any questions affecting only individual members and include, but are not limited to, the following.

(a) Whether Defendants unlawfully failed to pay overtime compensation in violation of the California Labor Code and applicable Wage Orders;

(b) Whether Plaintiffs and whether the California Subclass of Service Sales Representatives are non-exempt from the entitlement to overtime compensation for overtime hours worked under the overtime pay requirements of California law;

(c) Whether Cintas' policy and practice of classifying as exempt from overtime entitlement under California law and Cintas' policy and practice of failing to pay overtime to Service Sales Representatives violates applicable provisions of California law, including applicable Labor Code sections, applicable Wage Orders, and applicable state regulations;

(d) Whether Cintas has failed to pay wages when due within the meaning of California Labor Code § 203;

(e) Whether Cintas failed to provide paid rest periods as required under California Labor Code § 226.7;

(f) Whether Cintas' conduct as alleged in this action was wilful within the meaning of California Labor Code § 558;

(g) The proper measure of damages sustained by members of the California Subclass;

(h) Whether Cintas' practices as describe here constitute unfair business practices under Cali-

fornia Business & Professions Code, § 17200, *et seq.*; and

(i) Whether plaintiffs are entitled to restitution, disgorgement of profits, or other equitable relief to remedy Cintas' unfair business practices.

39. *Illinois Subclass (Illinois Wage Collection and Payment Act)*: Plaintiffs Mark Chainuck, Jeff Jay, Tade L. Wamer, Aaron M. Zadnick bring the Sixth Claim for Relief for violation of Illinois' Minimum Wage Law as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of all Service Sales Representatives, including Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers employed by Cintas in the state of Illinois, during the applicable limitations period, whom Cintas refused to compensate for overtime work performed in excess of forty (40) hours per workweek. Plaintiffs also assert class-wide claims under Illinois' Minimum Wage Law, alleging that Cintas failed to provide paid rest periods as required. Plaintiffs Mark Chainuck, Jeff Jay, Tade L. Wamer, Aaron M. Zadnick are members of the Illinois Subclass on whose behalf all claims alleging violations of the Illinois Minimum Wage Law are brought. The claims of the Illinois Subclass do not include any claims for unpaid overtime arising out of any periods of employment in any position other than as Service Sales Representatives.

40. The Illinois subclass is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the class period at least one hundred and forty (140) persons have been employed by Defendant Cintas as Service Sales Representatives in Illinois,

and that given turnover, the class is more numerous than that.

41. Common questions of law and fact exist as to members of the Illinois Subclass that predominate over any questions affecting only individual members and include, but are not limited to, the following:

(a) Whether Defendants unlawfully failed to pay overtime compensation in violation of the Illinois Minimum Wage Law, 820 III. Comp. Stat. § 105/1, *et seq.*;

(b) Whether Plaintiffs and whether the Illinois Subclass of Service Sales Representatives are non-exempt from the entitlement to overtime compensation for overtime hours worked under the overtime pay requirements of Illinois law;

(c) Whether Cintas' policy and practice of classifying as exempt from overtime entitlement under Illinois law and Cintas' policy and practice of failing to pay overtime to Service Sales Representatives violates applicable provisions of Illinois law, including applicable Labor Code sections, applicable Department of Labor Orders, applicable state administrative rules, and applicable state regulations;

(d) Whether Cintas failed to provide paid rest periods as required under Illinois Minimum Wage Law, 820 Ill. Comp. Stat. §§ 140/2 and 140/3;

(e) The proper measure of damages sustained by members of the Illinois Subclass.

42. *Michigan Subclass (Michigan Minimum Wage Law)*: Plaintiffs Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods jr. bring the Seventh Claim for

Relief for violation of Michigan's Fair Wages and Fringe Benefits Act as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of all Service Sales Representatives, including Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers employed by Cintas in the state of Michigan, during the applicable limitations period, whom Cintas refused to compensate for overtime work performed in excess of forty (40) hours per work week. Plaintiffs Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods Jr. are members of the Michigan Subclass on whose behalf all claims alleging violations of the Michigan Minimum Wage Law are brought. The claims of the Michigan Subclass do not include any claims for unpaid overtime arising out of any periods of employment in any position other than as Service Sales Representative.

43. The Michigan Subclass is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the Class period at least one hundred and ninety (190) persons have been employed by Defendant Cintas as Service Sales Representatives in Michigan, and that given turnover, the class is more numerous than that.

44. Common questions of law and fact exist as to members of the Michigan Subclass that predominate over any questions affecting only individual members and include, but are not limited to, the following:

(a) Whether Defendants unlawfully failed to pay overtime compensation in violation of the Michigan Minimum Wage Law, Mich. Compiled Laws § 408.381 *et seq.*;

(b) Whether Plaintiffs and the Michigan Subclass of Service Sales Representatives are non-exempt from the entitlement to overtime compensation for overtime hours worked under the overtime pay requirements of Michigan law;

(c) Whether Cintas' policy and practice of classifying as exempt from overtime entitlement under Michigan law and Cintas' policy and practice of failing to pay overtime to Service Sales Representatives violates applicable provisions of Michigan law, including applicable Labor Code sections, applicable Department of Consumer and Industry Services Orders, applicable state administrative rules, and applicable state regulations;

(d) The proper measure of damages sustained by members of the Michigan Subclass.

45. *New Jersey Subclass (New Jersey Wage and Hour Law)*: Plaintiff Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, Sam Williams brings the Eighth Claim for Relief for violation of New Jersey's Wages and Hour Law as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of all Service Sales Representatives, including Commission Route Salespersons, Commission Route Sales Representatives, and/or Route Drivers employed by Cintas in the state of New Jersey, during the applicable limitations period, whom Cintas refused to compensate for overtime work performed in excess of forty (40) hours per work week. Plaintiffs also assert class' wide claims under New Jersey Wage and Hour Law, N.J. Stat §2C:40A-2, alleging that Cintas failed to pay wages when due. Plaintiffs Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, Sam

Williams are members of the New Jersey Subclass on whose behalf all claims alleging violations of the New Jersey Wage and Hour Law are brought. The claims of the New Jersey Subclass do not include any claims for unpaid overtime arising out of any periods of employment in any position other than as Service Sales Representative.

46. The New Jersey Subclass is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the Class period at least seventy five (75) persons have been employed by Defendant Cintas as Service Sales Representatives in New Jersey, and that given turnover, the class is more numerous than that.

47. Common questions of law and fact exist as to members of the New Jersey Subclass that predominate over any questions affecting only individual members and include, but are not limited to, the following:

(a) Whether Defendants unlawfully failed to pay overtime compensation in violation of the New Jersey Wage and Hour Law, N.J. Stat § 34:11-56(a), *et seq.*;

(b) Whether Plaintiffs and the New Jersey Subclass of Service Sales Representatives are non-exempt from the entitlement to overtime compensation for overtime hours worked under the overtime pay requirements of New Jersey law;

(c) Whether Cintas' policy and practice of classifying as exempt from overtime entitlement under New Jersey law and Cintas' policy and practice of failing to pay overtime to Service

Sales Representatives violates applicable provisions of New Jersey law, including applicable Labor Code sections, applicable Department of Consumer and Industry Services Orders, applicable state administrative rules, and applicable state regulations;

(d) Whether Cintas has failed to pay wages when due within the meaning of New Jersey Wage and Hour Law, N.J. Stat § 2C:40A-2;

(e) The proper measure of damages sustained by members of the New Jersey Subclass.

ADDITIONAL CLASS ACTION ALLEGATIONS

48. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class and Subclasses. Plaintiffs have retained counsel who are competent and experienced in complex class actions, ERISA, RSA, and state labor and employment litigation.

49. Class certification of the First and Second Claims for Relief for violations of ERISA is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual Class or Subclass members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants, and/or because adjudications with respect to individual Class or Subclass members would as a practical matter be dispositive of the interests of non-party Class or Subclass members.

50. In addition, Class certification of the First and Second Claims for Relief for violations of ERISA and for the Fourth through Eighth Claims is appropriate pursuant to Fed. R. Civ. P.23(b)(2) because

Defendant Cintas has acted or refused to act on grounds generally applicable to the Class and Subclasses, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the Class and Subclasses as a whole. The members of the Class and each of the Subclasses are entitled to injunctive relief to end Cintas' common and uniform practices of failing to keep accurate time records and failing to compensate its employees for all work performed for the benefit of Cintas, and to require the fiduciaries of the Cintas Partners' Plan to credit all service which should be credited.

51. Class certification of the Fourth through Eighth Claims is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the California, Illinois, Michigan, and New Jersey Subclasses predominate over any questions affecting only individual members of the Subclasses, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Cintas' common and uniform policies and practices unlawfully treat members of each Subclass as exempt from overtime pay requirements. The damages suffered by individual Subclass members are small compared to the expense and burden of individual prosecution of this litigation. In addition, Class certification is superior because it will obviate the need for unduly duplicative litigation, which might result in inconsistent judgments about Cintas' practices.

52. Plaintiffs know of no difficulty, that would be encountered in the management of this litigation, which would preclude its maintenance as a class action.

53. The names and addresses of the Plaintiff Class Members are available from Defendant Cintas. To the extent required by law, notice will be provided to the Plaintiff Class via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in class actions.

FIRST CLAIM FOR RELIEF

Against Defendant Cintas

(ERISA Section 502(a)(3) Based ion Failure to Maintain Records)

54. Plaintiffs Paul Veliz, James White Mark Chainuck, Jeff Jay, Tade L. Wasmer, Aaron M. Zadnick, Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods Jr., Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, Sam Williams, on behalf of themselves and all prospective members of the Class, reallege and incorporate by reference paragraphs 1 through 53 as if they were set forth again herein.

55. ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1) requires that an employer which sponsors an employee benefit plan maintain records with respect to each of its employees sufficient to determine the benefits due or which may become due to such employees pursuant to that plan.

56. ERISA §§ 202, 203, and 204, 29 U.S.C. §§ 1052, 1053, and 1054, set forth minimum standards with regard to participation, vesting, and accrual of benefits in employee pension benefit plans. Each of these provisions of ERISA requires that the plans take into account "hours of service," as that term is defined in regulations promulgated by the U.S. Secretary of Labor. In 29 C.F.R. § 2530.200b-2, the

Secretary of Labor has defined an hour of service as, inter alia, "each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer. . . ."

57. Pursuant to the terms of the Cintas Partners Plan, Plaintiffs' rights to attain participant status in that plan, vest non-forfeitable rights in their accrued benefits under the plan, share in contributions to the plan and/or other aspects of Plaintiffs' rights under the plan are dependent, in part, on Plaintiffs' hours of service. Plaintiffs allege on information and belief that the plan document for the Cintas Partners' Plan defines an "hour of service" to include all hours for which an employee is paid, or entitled to payment, for the performance of duties for the employer.

58. By Cintas' failure to record and/or report all of the hours worked by its Service Sales Representatives, including the Plaintiffs and members of the prospective Class, Cintas has failed to maintain records with respect to each of its employees sufficient to determine the participation, vesting, and benefit accrual rights of its plan participants, in violation of ERISA § 209(a)(1).

59. To remedy this violation of ERISA by Cintas, Plaintiffs on behalf of themselves and members of the prospective Clasp seek injunctive relief and such other equitable relief as the Court deems just and proper, as pro tided by Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

60. Plaintiffs on behalf of themselves and members of the prospective Class, seek recovery of their attorneys' fees, expenses, and costs of action to be paid by Cintas, as provided by Section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g)(1).

SECOND CLAIM FOR RELIEF

Against Defendants Cintas, P141 Administrator and Does 1-10

(Pursuant to ERISA § 502(a)(3) to Remedy Failures to Credit Service)

61. Plaintiffs Paul Veliz, James White, Mark Chainuck, Jeff Jay, Tade L. Wasmer, Aaron M. Zadnick, Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods Jr., Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, Sam Williams, on behalf of themselves and all members of the prospective Class, reallege and incorporate by reference paragraphs 1 through 60 as if they were set forth ;again herein.

62. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires employee benefit plan fiduciaries to discharge their duties with respect o the plan solely in the interest of the participants and beneficiaries and, inter alia, (1) or the exclusive purpose of providing benefits to participants and their beneficiaries and defray; g reasonable expenses of administration; (2) with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and (3) in accordance with the documents and instruments governing the plan.

63. At all relevant times, the governing instrument of the Cintas Partners Plan has conferred on defendant Plan Administrator of the Cintas Partners Plan discretionary authority, responsibility, and/or control with respect to the Crediting of hours of service, thereby rendering the Plan Administrator of the Cintas Partners Plan a fiduciary in that regard.

On information and belief, defendant Plan Administrator of the Cintas Partners Plan has exercised actual discretionary authority, responsibility, and/or control in determining what hours of service would and would not be credited by the Cintas Partners Plan. By reason of the exercise of such discretion, the Plan Administrator of the Cintas Partners Plan has been a fiduciary of that plan with respect to the crediting of hours of service. 'On further information and belief, defendants Cintas and Does 1-10 have exercised actual discretionary authority, responsibility, and/or control in determining what hours of service would and Would not be credited by the Cintas Partners Plan. By reason of the exercise of such discretion, defendants Cintas and Does 1-10 have been fiduciaries of that plan with respect to the crediting of hours of service.

64. Defendants Plan Administrator of the Cintas Partners Plan, Cintas and Does 1-10 have breached their fiduciary duties by failing to credit as hours of service overtime performed by Service Sales Representatives employed by Cintas.

65. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs on behalf of themselves and all members of the prospective Class seek an injunction requiring defendants to credit all members of the prospective Class with hours of service for all of the past and future work performed by those Class members.

66. Plaintiffs on behalf of themselves and members of the prospective Class, seek recovery of their attorneys' fees and costs of action to be paid by defendants, as provided by Section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g)(1).

THIRD CLAIM FOR RELIEF

Against Defendants

(FLSA Claims, 29 U.S.C. § 201, et seq., Brought by All Plaintiffs on Behalf of Themselves and All Members of the Nationwide FLSA Collective Plaintiffs)

67. Plaintiffs Paul Veliz, James Whiter Mark Chainuck, Jeff Jay, Tade L. Wasmer, Aaron M. Zadnick, Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods Jr., Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, Sam Williams, on behalf of themselves and all Nationwide FLSA Collective plaintiffs, reallege and incorporate by reference paragraphs 1 through 66 as if they were set forth again herein.

68. At all relevant times, Cintas has been, and continues to be, an "employer" engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Cintas has employed, and continues to employ, "employee[s]," including the Plaintiffs and each of the collective Nationwide FLSA Collective Plaintiffs. At all relevant times, Cintas has had gross operating revenues in excess of $500,000.

69. Defendant Cintas operates, and at all times during the liability period, has operated a uniform supply company which designs, manufactures and delivers employee uniforms and related products to its industrial customers on a regular basis.

70. Each of the Plaintiffs identified in paragraphs 8 through 22 consents to sue in this action pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b). Additional

Plaintiffs have and/or will be signing consent forms and joining as Plaintiffs on this claim in the future.

71. The FLSA requires each covered employer, such as Defendant Cintas, to compensate each of its non-exempt employees at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty (40) hours in a work week.

72. Defendant has employed and continues to employ numerous Service Sales Representatives, including Plaintiffs, to deliver clean uniforms and mats to industrial customers on a daily basis and otherwise to service existing customers of Cintas. The primary function of Service Sales Representatives is to service customer contracts, which are obtained, negotiated, renewed and modified by Cintas' separate sales force, by supervising or performing the loading of clean employee uniforms and other items to be delivered, making regular deliveries of clean uniforms, collecting, counting and returning dirty, uniforms, processing customer requests for uniform repairs, sizing changes on uniforms, addressing customer concerns, and otherwise servicing contracts of existing customers.

73. Plaintiffs and Nationwide FLSA Collective Plaintiffs are not exempt from the right to receive overtime pay under the FLSA and are not exempt from the requirement that Cintas pay them overtime compensation under t+ FLSA. The Nationwide FLSA Collective Plaintiffs are entitled to be paid overtime compensation for all overtime hours worked.

74. At all relevant times, Cintas had a policy and practice of failing and refusing to pay overtime pay to its Service Sales Representatives for their hours worked

in excess of forty (40) hours per week, whether through the failure to provide any overtime pay, the denial of premium pay for all overtime hours actually worked, and/or the failure to calculate and pay overtime premiums according to law.

75. As a result of Cintas' failure to compensate its Service Sales Representatives, including the Plaintiffs and Nationwide FLSA Collective Plaintiffs, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Cintas has violated, and continues to Violate, the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. § 207(a)(1), and § 215(a).

76. As a result of Cintas' failure to record, report, credit, and/or compensate its Service Sales Representatives, including the Plaintiffs and Nationwide FLSA Collective Plaintiffs, Cintas has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine the wages, hours, and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. § 201, *et seq.*, including 29 U.S.C. § 211(c) and § 215(a).

77. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

78. The Plaintiffs, on behalf of themselves and Nationwide FLSA Collective Plaintiffs, seek damages in the amount of their respective unpaid overtime compensation, plus liquidated damages, as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.

79. The Plaintiffs, on behalf of themselves and Nationwide FLSA Collective Plaintiffs, seek recovery

of their attorneys' fees and costs of action to be paid by Cintas, as provided by the FLSA, 29 U.S.C. § 216(b).

FOURTH CLAIM FOR RELIEF

(Cal. Labor Code § 203, 1194; Cal. Wage Orders Nos. 4 and/or 7, Brought by Plaintiffs Paul Veliz and James White on Behalf of Themselves and All Members of the California Subclass)

80. Plaintiffs Paul Veliz and James White ("California Class Representatives"), on behalf of themselves and all members of the California Subclass, reallege and incorporate by reference paragraphs 1 through 79 as if they were set forth again herein.

81. Under California Labor Code § 510 and Industrial Wage Commission wage order No.4, Defendants were and are obligated to compensate California Class Representatives and all members of the California Subclass at an overtime premium for all hours worked in excess of eight (8) hours in one day and/or in excess of forty (40) hours in a work week. Overtime compensation must be paid at a rate not less than one and one-half times the regular rate of pay.

82. Sections 201 and 202 of the Labor Code require Defendants to pay its employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

83. Under California Labor Code § 226.7, an employer is required to provide paid rest periods to its employees.

84. California Class Representatives and all members of the California Subclass were regularly required to work in excess of forty (40) hours per week and/or eight (8) hours in one work day, but were not paid for all such overtime work as required by California law. Nor were the California Class Representatives and all similarly situated Service Sales Representatives provided paid rest periods as was required under California law.

85. By failing to pay all overtime compensation due, whether through the failure to provide any overtime pay, the denial of premium pay for all overtime hours actually worked, and/or the failure to calculate and pay overtime premiums according to law, by failing to pay all wages when due, and by failing to provide paid rest periods to the California Class Representatives and all members of the California Subclass, Defendants willfully, knowingly and/or recklessly violated California wage and hour laws, which require overtime compensation and paid rest periods be provided to non-exempt employees such as Service Sales Representatives.

86. As a result of Defendants' policy and practice of withholding overtime compensation, failing all wages owed when due, and failing to provide paid rest periods, the California Class Representatives and all members of the California Subclass have been damaged in that the they have not received wages due to them pursuant to California wage and hour laws, in violation of Labor Code § 203.

87. Defendants have made it difficult to account with precision for the unpaid overtime worked by their Service Sales Representatives during the liability period, because they did not make, keep, and preserve the hours worked by such employees as required for non-exempt employees by California Labor Code § 11174(d) and applicable wage orders. Defendants' failure to retain records of hours worked by Service Sales Representatives was willful and deliberate, and designed to serve its policy of unlawfully denying overtime compensation to persons employed as Service Sales Representatives.

88. As a result of the unlawful acts of Defendants, the California Class Representatives and all members of the California Subclass have been deprived and continue to be deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts pursuant to California Labor Code § 1194, attorneys' fees, costs, statutory penalties, and other compensation.

FIFTH CLAIM FOR RELIEF

Unfair Business Practices

[Cal. Bus. & Prof. Code §§ 17200-17208, Brought by Plaintiffs Paul Veliz and James White Behalf of Themselves and All Members of the California Subclass]

89. Plaintiffs Paul Veliz and James White incorporate paragraphs 1 through 79 as though fully set forth herein.

90. The California Representatives, In behalf of themselves, the California Subclass and the general public, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of all

defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to plaintiffs, the general public, and the California Subclass. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

91. The prompt payment of overtime pay and other legally required wages and benefits is a fundamental public policy of this State. Labor Code § 90.5(a) articulates the public policies of this State to enforce minimum labor standards vigorously, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

92. Through their failures to pay legally required overtime wages, to provide itemized statements of hours worked with payments of wages, to pay wages when due, to provide paid break time, and other conduct alleged herein, Cintas has violated numerous specific provisions of state and federal law and have engaged in unlawful and unfair business practices in violation of Business & Professions Code § 17200, et seq.; depriving the named plaintiffs, all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

93. Injunctive relief pursuant to Business and Professions Code § 17203 is necessary to prevent Cintas from continuing to engage in unfair business practices as alleged in this Complaint. Defendants, and each of them, and/or persons acting in concert with them, have done, are now doing, and will continue to do or cause to be done, the illegal acts alleged in this

Complaint, unless restrained and enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will result. Plaintiffs have no plain, speedy, or adequate remedy at law, for reasons which include but are not limited to the following: (a) it is difficult to measure the amount of monetary damages that would compensate plaintiffs for defendants' wrongful acts; and (b) in any event, pecuniary compensation alone would not afford adequate and complete relief The continuing violation of law, by defendants, will cause great and irreparable damage to plaintiffs and others similarly situated unless defendants are immediately restrained from committing further illegal acts.

94. Business and Professions Code §117203 provides that the Court may restore to an aggrieved party any money or property acquired 'by means of unlawful and unfair business practices. Plaintiffs seek restitution of all unpaid wages owing to the members of the class, according to proof, as well as all other available equitable relief.

SIXTH CLAIM FOR RELIEF

(Illinois Minimum Wage Law Claims, 820 Ill. Comp. Stat. § 105/1, et seq., Brought by Plaintiffs Mark Chainuck, Jeff Jay, Tade L. Wasmer, and Aaron M. Zadnick on Behalf of Themselves and All Other Members of the Illinois Subclass)

95. Plaintiffs Mark Chainuck, Jeff Jay, Tade L. Wasmer, and Aaron M. Zadnick ("the Illinois Class Representatives"), on behalf of themselves and all prospective members of the Illinois Subclass, realleges and incorporates by reference paragraphs 1 through 79 as if they were set forth again herein.

96. The Illinois Class Representatives bring this action on behalf of the Illinois subclass because Illinois law provides the Illinois subclass with certain benefits and protections not accorded under federal law, including the ability to seek injunctive relief, the absence of a "good faith" affirmative defense to liability, an unqualified three year statute of limitations, the ability to recover withheld overtime wages despite not filing a consent to join the FLSA action, and the ability to seek punitive damages.

97. The foregoing conduct, as alleged, violates the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/1, *et seq*.

98. At all relevant times, Cintas has been, and continues to be, an "employer" within the meaning of the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/1, *et seq*. At all relevant times, Cintas has employed, and continues to employ, employees, including the Illinois Class Representatives and each of the members of the prospective Illinois Subclass, within the meaning of the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/1, *et seq*.

99. The Illinois Minimum Wage Law requires an employer, such as Cintas, to pay overtime compensation to all non-exempt employees. The Illinois Class Representatives and members of the Illinois subclass are not exempt from overtime pay requirements under Illinois law and, thus, are entitled to be paid overtime compensation for all overtime hours worked.

100. At all relevant times, Cintas had a policy and practice of failing and refusing to pay overtime pay to its Service Sales Representatives for their hours worked in excess of forty (40) hours per week, whether through the failure to provide any overtime

pay, the denial of premium pay for all overtime hours actually worked, and/or the failure to calculate and pay overtime premiums according to law.

101. As a result of Cintas' failure to pay wages earned and due, and its decision to withhold wages earned and due its non-exempt Service Sales Representatives employed by Cintas in the State of Illinois, including the Illinois Class Representatives and members of the prospective Illinois Subclass, for work performed at the regular hourly wage rate or at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Cintas has violated, and continues to violate, the Illinois Minimum Wage Law, 820 III. Comp. Stat. § 105/4a.

102. As a result of Cintas' failure to pat wages earned and due, and its decision to withhold wages earned and due its non-exempt Service Sales Representatives employed by Cintas in the State of Illinois but who were separated from their respective employment with Cintas, including the Illinois Class Representatives and former employees who are members of the prospective Illinois Subclass, for work performed at the regular hourly wage rate or at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Cintas has violated, and continues to violate, the Illinois Minimum Wage Law, 820 III. Comp. Stat. § 105/4a.

103. As a result of Cintas' failure to record, report, credit, and furnish to each of its non-exempt Service Sales Representatives employed by Cintas in the State of Illinois, including the Illinois Class Representatives and members Of the prospective Illinois Subclass, their respective wage and hour records

showing all wages earned and due for all work performed, Cintas has failed to make, keep, preserve, and furnish such records in violation of the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/8.

104. The Illinois Class Representatives, on behalf of themselves and members of the prospective Illinois Subclass, seek damages in the amount of the respective unpaid wages earned and due at the regular hourly wage rate, and at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a work-week, punitive damages in the amount of 2 percent of the amount of any such underpayments for each month following the underpayment as provided by the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/12, and such other legal and equitable relief as the Court deems just and proper.

105. The Illinois Class Representatives, on behalf of themselves and members of the prospective Illinois Subclass, seek recovery of attorneys' fees and costs of action to be paid by Cintas, as provided by the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/12.

SEVENTH CLAIM FOR RELIEF

(Michigan Minimum Wage law claims, Mich. Compiled Laws, § 408.381, et seq., Brought by Plaintiff Bobby C. Hodge, Noel Lloyd, Kelly Smith, and Earl C. Woods Jr. on behalf of Themselves and All Members of the Michigan Subclass)

106. Plaintiff Bobby C. Hodge, Noel Lloyd, Kelly Smith, and Earl C. Woods Jr., on behalf of himself and all members of the Michigan Subclass, realleges and incorporates by reference paragraphs 1 through 79 as if they were set forth again herein.

107. Plaintiffs Bobby C. Hodge, Noel Lloyd, Kelly Smith, and Earl C. Woods Jr. ("the Michigan Class Representatives") bring this action on behalf of the Michigan subclass because Michigan law provides the Michigan subclass with certain benefits and protections not accorded under federal law, including the ability to seek injunctive relief, the absence of a "good faith" affirmative defense to liability, an unqualified three year statute of limitations, the ability to recover withheld overtime wages despite not filing a consent to join the FLSA action, and the lack of any exemption similar to the FLSA's Motor Carrier Act exemption.

108. The foregoing conduct, as alleged, violates Mich. Compiled Laws, § 408.381, *et seq*.

109.At all relevant times, Cintas has been, and continues to be, an "employer" within the meaning of the Mich. Compiled Laws § 408.381, *et seq*. At all relevant times, Cintas has employed, and continues to employ, employees, including the Michigan Class Representatives and all members of the Michigan Subclass, within the meaning of Mich. Compiled Laws § 408.381, *et seq*.

110. The Michigan Wage and Hour laws require an employer, such as Defendant Cintas, to pay overtime compensation to all non-exempt employees. Neither the Michigan Class Representatives nor the members of the Michigan Subclass are exempt from overtime pay requirements under Michigan law and, thus, are entitled to be paid overtime compensation for all overtime hours worked.

111. At all relevant times, Cintas had a policy and practice of failing and refusing to pay overtime pay to its Service Sales Representatives for their hours worked

in excess of forty (40) hours per week, whether through the failure to provide any overtime pay, the denial of premium pay for all overtime hours actually worked, and/or the failure to calculate and pay overtime premiums according to law.

112. As a result of Cintas' failure to pay wages earned and due, and its decision to withhold wages earned and due its non-exempt Service Sales Representatives employed by Cintas in the State of Michigan, including the Michigan Class Representatives and all members of the Michigan Subclass, for work performed at the regular hourly wage rate or at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Cintas has violated, and continues to violate, Mich. Compiled Laws §§ 408.383, 408.384(a), and 408.393, respectively.

113. As a result of Cintas' failure to pay wages earned and due, and its decision to withhold wages earned and due its non-exempt Service Sales Representatives employed by Cintas in the State of Michigan but who were separated from their respective employment with Cintas, including Plaintiffs Bobby C. Hodge, N41 Lloyd, Kelly Smith, Earl C. Woods Jr. and former employees who are members of the prospective Michigan Subclass, for work performed at the regular hourly wage rate or at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Cintas has violated, and continues to violate, Mich. Compiled Laws §§ 408.383, 408.384(a), and 408.393, respectively.

114. As a result of Cintas' failure to record, report, credit, and furnish to each of its non-exempt Service Sales Representatives employed by Cintas in the

State of Michigan, including the Michigan Class Representatives and all members of the Michigan Subclass, their respective wage and hour records showing all wages earned and due for all work performed, Cintas has failed to make, keep, preserve, and furnish such records in violation of Mich. Compiled Laws § 408.391.

115. The Michigan Class Representatives, on behalf of themselves and members of the prospective Michigan Subclass, seek damages in the amount of the respective unpaid wages earned and due at the regular hourly wage rate, and at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a work week, as provided by Mich. Compiled Laws §§ 408.384(a)(1) and 408.393(1), and an equal additional amount as liquidated damages as provided in Mich. Compiled Laws § 408.393(1), and such other legal and equitable relief from Cintas' unlawful and willful conduct as the Court deems just and proper.

116. The Michigan Class Representatives, on behalf of themselves and members of the prospective Michigan Subclass, seek recovery of attorneys' fees and costs of action to be paid by Cintas, as provided by Mich. Compiled Laws § 408.393(1).

EIGHTH CLAIM FOR RELIEF

(New Jersey Wage and Hour law claims, New Jersey Stat. § 34:11-56(a), et seq., and § 2C:40A-2, Brought by Plaintiffs Wayne Edwards, Wilfredo Huertos Jr., Amber Kelly, Derek Samuels, and Sam Williams on behalf of Themselves and All Members of the New Jersey Subcass)

117. Plaintiff Wayne Edwards, Wilfredo Huertos Jr., Amber Kelly, Derek Samuels, and Sam Williams,

on behalf of himself and all members of the New Jersey Subclass, realleges and incorporates by reference paragraphs 1 through 79 as if they were set forth again herein.

118. Plaintiffs Wayne Edwards, Wilfredo Huertos Jr., Amber Kelly, Derek Samuels, and Sam Williams ("the New Jersey Class Representatives") bring this action on behalf of the New Jersey subclass because New Jersey law provides the New Jersey subclass with certain benefits and protections not accorded under federal law, including an unqualified two year statute of limitations, the ability to recover withheld overtime wages despite not filing a consent to join the FLSA action, and the lack of any exemption similar to the FLSA's Motor Carrier Act exemption.

119. The foregoing conduct, as alleged, violates N.J. Stat., § 34:11-56(a), *et seq*., and § 2C:40A-2

120. At all relevant times, Cintas has been, and continues to be, an "employer" within the meaning of N.J. Stat., § 34:11-56(a), *et seq*. At all relevant times, Cintas has employed, and continues to employ, employees, including the New Jersey Class Representatives and all members of the New Jersey Subclass, within the meaning of N.J. Stat., § 34:11-56(a), *et seq*.

121. The New Jersey Wage and Hour laws require an employer, such as Defendant Cintas, to pay overtime compensation to all non-exempt employees. Neither the New Jersey Class Representatives nor the members of the New Jersey Subclass are exempt from overtime pay requirements under New Jersey law and, thus, are entitled to be paid overtime compensation for all overtime hours worked.

122. At all relevant times, Cintas had a policy and practice of failing and refusing to pay overtime pay to its Service Sales Representatives for their hours worked in excess of forty (40) hours per week, whether through the failure to provide any overtime pay, the denial of premium pay for all overtime hours actually worked, and/or the failure to calculate and pay overtime premiums according to law.

123. Under New Jersey Wage and Hour Law, N.J. Stat § 2C:40A-2, Cintas is obligated to pay all wages owed when due. By failing to pay all overtime as alleged herein, Cintas has violated the rights of the New Jersey Class Representatives nor the members of the New Jersey Subclass to full and timely payment under the law.

124. As a result of Cintas' failure to pa' wages earned and due, and its decision to withhold wages earned and due its non-exempt Service Sales Representatives employed by Cintas in the State of New Jersey, including the New Jersey Class Representatives and all members of the New Jersey Subclass, for work performed at the regular hourly wage rate or at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Cintas has violated, and continues to violate, N.J. Stat. § 34:11-56(a), *et seq.*, and §2C:40A-2.

125. As a result of Cintas' failure to pa; wages earned and due, and its decision to withhold wages earned and due its non-exempt Service Sales Representatives employed by Cintas in the State of New Jersey but who were separated from their respective employment with Cintas, including Plaintiffs Wayne Edwards, Wilfredo Huertos Jr., Amber Kelly, Derek Samuels, and Sam Williams and former employees

who are members of the prospective New Jersey Subclass, for work performed at the regular hourly wage rate or at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Cintas has violated, and continues to violate, New Jersey Stat. § 34:11-56(a), *et seq.*, and §2C:40A-2.

126. As a result of Cintas' failure to record, report, credit, and furnish to each of its non-exempt Service Sales Representatives employed by Cintas in the State of New Jersey, including the New Jersey Class Representatives and all members of the New Jersey Subclass, their respective wage and hour records showing all wages earned and due for all work performed, Cintas has failed to make, keep, preserve, and furnish such records in violation of N.J. Stat. § 34:11-56a20.

127. The New Jersey Class Representatives, on behalf of themselves and members of the prospective New Jersey Subclass, seek damages in the amount of the respective unpaid wages earned and due at the regular hourly wage rate, and at a rate not less than one and one-half times the regular rate of pay for work performed 'in excess of forty (40) hours in a work week, as provided by N.J. Stat. § 34:11-56a25 , and such other legal and equitable relief from Cintas' unlawful and willful conduct as the Court deems just and proper.

128. The New Jersey Class Representatives, on behalf of themselves and members of the prospective New Jersey Subclass, seek recovery of attorneys' fees and costs of action to be paid by Cintas, as provided by N.J. Stat. § 34:11-56a25.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and all members of the proposed Class and Subclasses pray for relief as follows:

1. Certification of this action as a class action on behalf of the proposed Class and the California, Illinois, Michigan, and New Jersey Subclasses, respectively;

2. Designation of this action as a collective action on behalf of the proposed Nationwide FLSA Collective Plaintiffs (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Opt-In Class, apprizing them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. §216(b), and a tolling of the statute of limitations on the claims of all members of the FLSA Opt-In Class from the date the instant complaint was filed until the class members are provided with reasonable notice of the pendency of this action and a fair opportunity to exercise their right to opt in as plaintiffs.

3. Designation of Representative Plaintiffs Paul Veliz, James White, Mark Chainuck, Jeff Jay, Tade L. Wasmer, AaronM. *nick, Bobby C. Hodge, Noel Lloyd, Kelly Smith, Earl C. Woods Jr., Wayne Edwards, Wilfredo Huertas Jr., Amber Kelly, Derek Samuels, and Sam Williams as representatives of the Nationwide FLSA Collective Plaintiffs and as representatives of the ERISA Class; designation of Plain-

tiffs Paul Veliz and James White as representatives of the California Subclass; Plaintiffs Mark Chainuck, Jeff Jay, Tade L. Warner, and Aaron M. Zadnick as representatives of the Illinois Subclass; Plaintiffs Bobby C. Hodge, Noel Lloyd, Kelly Smith, and Earl C. Woods Jr. as representatives of the Michigan Subclass; and Plaintiffs Wayne Edwards, Wilfredo Huertos Jr., Amber Kelly, Derek Samuels, and Sam Williams as representatives of the New Jersey Subclass.

4. For the ERISA claims:

   (A) A declaration that Defendant Cintas has violated ERISA § 209(a), 29 U.S.C. § 1129(a);

   (B) Appropriate equitable and injunctive relief to remedy Cintas' violations of ERISA § 209(a);

   (C) A declaration that defendants have breached their fiduciary duties by failing to credit the Plaintiffs and all Class members with hours of service for all work performed, as required by ERISA and under the terms of the Cintas Partners' Plan;

   (D) An order requiring that defendants remedy their breaches of fiduciary duty by crediting all Class members with hours of service for all of their past, present, and future uncompensated work through proper allocations and/or further contributions to the Cintas Partners' Plan;

   (E) Such other relief as the Court may deem just and proper; and

Attorneys' fees and costs of suit;

5. For the claims other than those brought under ERISA:

(A) A declaratory judgment that the practices complained of herein are unlawful under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; California Labor Code § 1194, *et seq.* and Wage Orders Nos. 4 and/or 7; Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/1, *et seq.*, Michigan Minimum Wage Law, Mich.Compiled Laws, § 408.381, *et seq.*; and New Jersey Wage and Hour Law, N.J. Stat. § 34: 1-56(a), *et seq.*

(B) An injunction against Cintas and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

(C) An award of damages, including liquidated and exemplary damages and waiting time penalties and other statutory penalties to be paid by Cintas;

(D) Costs of action incurred herein, including rea-
sonable attorneys' fees and expert fees;

(E) Pre-Judgment and Post-Judgment interest, as provided by law; and

(F) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

DATED: March 19, 2003

Respectfully submitted,

ALTSHULER, BERZON, NUSSBAUM,
RUBIN & DEMAIN
MILBERG WEISS BERSHAD HYNES
& LERACH, LLP
TRABER & VOORHEES

By /s/ Scott A. Kronland
SCOTT A. KRONLAND
Attorneys for Plaintiffs PAUL VELIZ, *et al.*